ISLAM, GENDER, AND COLONIALISM: SOCIAL AND RELIGIOUS TRANSFORMATIONS in the MUSLIM COURT OF THE GAMBIA, 1905 – 1970

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ABSTRACT

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This dissertation focuses on the late nineteenth and early twentieth century Islamic, colonial, and gender history of the Senegambia region of West Africa. It combines the use of oral sources with a largely unstudied body of archival records generated by Muslim courts since their creation by the British in 1905 to explore the establishment and maintenance of multiple and often competing legal terrains and judicial traditions. The study reveals the complications and contradictions of British colonialism in the Gambia through the everyday lives of women and men in the colonial city of Bathurst. It also demonstrates how the creation of the Muslim court by the British brought changes to relations within Gambian households as women took advantage of opportunities provided by the British colonial administration to challenge existing systems of patriarchy, marriage, divorce, child custody, maintenance, and property rights issues.

Dedication

This dissertation is dedicated to the living memory of my mother Satou Nanding Ceesay who showed me the way to school. It is especially dedicated to my wife Binta Saho Sanyang, and my children Isatou and Harouna Saho, and to the entire Saho family of Baddibu Salikenye.

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Introduction

In March 1928 a section of Muslim elders in Bathurst (now Banjul) filed an application in the Supreme Court for an injunction to restrain Omar Sowe, the Imam of the Central mosque of Bathurst, from leading prayers in this mosque.[1] This was because Imam Sowe allegedly condoned adultery, which, according to the Bathurst Muslim elders, was a capital offense under Islamic law. The elders further alleged that the Imam had officiated at the baptism of the illegitimate son of a Muslim elder and legislative council member, Ousman Jeng. Those who were vocal in their accusations accused Jeng of adultery after he fathered a child outside marriage. In addition, they accused the Imam of solemnizing the birth of the child and officiating at Jeng's subsequent marriage to the woman who had borne his child.

The case was first heard in a lower court in Bathurst but was dismissed as the court was not empowered to deal with such issues. However, this did not discourage the opponents of Jeng and Sowe. They proceeded to the Muslim or Qadi court where the case was thrown out again, the colonial governor suspecting that the Qadi (Muslim judge) was a close friend of the complainant and would therefore not be able to give fair judgment. And yet the legislative council member Ousman Jeng was also closely associated with the colonial government. In fact, at the time he was the only Gambian member of the Legislative Council representing the Bathurst Muslim community.[2]

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[1] In 1816, the British established a settlement on this tiny island named St. Mary's Island by the Portuguese. The British renamed the new town Bathurst, after the then Secretary of State for the British Colonies, Henry Bathurst. In 1973, the name was changed from Bathurst to Banjul. Here, Bathurst and Banjul are used interchangeably.

[2] In this dissertation, the idea of a Muslim community represents a group of people of diverse ethnic backgrounds who profess Islam as their religion and all living in Bathurst.

Following this legal setback, a section of the Muslim community represented by Momodou Jahumpa and Essa Drammeh, who were joined by numerous other Bathurst Muslim elders from the *Juma* (Mosque) Society, made an appeal to the Supreme Court, but the case was not heard there either since "Islam has no place in a British court."[3] Judge Aikins reasoned that the Supreme Court had no power to decide what is right or wrong from a purely religious point of view, and held that the alleged misconduct of the Imam in condoning adultery was precisely a question of religion and not a question for a secular court. Following this, the petitioners alleged, "Islam was thrown out of court, trampled underfoot to vindicate the offending Imam, that it was a great insult to Muslims of Bathurst who have been greatly embittered."[4]

After all the legal maneuvers failed, the accusers petitioned the Prince of Wales and British MP Horrabin, who raised the matter in England in the House of Commons debate in April 1930. The crisis culminated in such high tensions between the Muslim community and the colonial authorities that the latter were worried about a Muslim uprising. This fear of civil unrest led the colonial government to deploy the Gambia Company into Bathurst and police guards at Government House. The government also replaced the guards at the bank and treasury with soldiers of the Royal West Africa Frontier Force.[5] Ousman Jeng was not re-elected to his

[3] National Records Service (NRS), Colonial Secretary's Office (CSO), CSO3/133, 1928, Bathurst Mosque, Quadrangle, Banjul, The Gambia.

[4] NRS, CSO 3/133.

[5] The Royal West African Frontier Force was a multi-battalion field force, formed by the British Colonial Office in 1900 to garrison the West African colonies of Nigeria, Gold Coast, Sierra Leone and Gambia.

legislative seat in 1932 after he ran out of favor with the Muslim community that he represented.[6]

The incident described above is a microcosm of the tension that existed between individuals, community groups, and the then recently established colonial court in the Gambia in the early 20th century. The case occurred only two decades after the establishment of the Muslim court in Bathurst (the administrative headquarters of the newly created British colony of the Gambia) in 1905. The court was created to deal with matters of family law because control of families was important to both the British and the Muslim elders. As I discuss in Chapters Two and Three, the British were interested in regulating domestic relations among the populace to maintain peace and order and to promote a stable workforce to enable the cultivation of groundnut as the main cash crop of the country. The Muslim elders were interested in preserving the institution of marriage as it is sanctioned in the Muslim holy book.

The case above shows the importance of Islam to certain groups of people in Bathurst at that time. It also demonstrates that Muslims were divided over political and religious representation. Significantly, it reveals colonial authorities' interference in the Muslim court system and their ambivalence towards it, in contrast to their efforts to appease Muslim elders and to ensure that peace and tranquility prevailed in the colony. The incident further highlights the role of the Muslim court as a location where aggrieved persons could seek redress in the name of Islam. Moreover, this case provides a window into the social, economic, and political changes taking place in Gambian society during the first half of the twentieth century, and how the people of Bathurst responded to these transformations.

[6] NRS, CSO3/133.

In using records and transcripts from the Muslim court, the Gambia National Archives, and oral sources, this dissertation deals with family law and gender relationships in Bathurst, a community that was a rapidly growing Islamic community. It focuses on the civil disputes that were brought before these courts from 1905 – 1970, and examines cases brought before the "Native courts," including district and village courts established by the British in the 1900s. To a larger extent, this study is about Bathurst and its environs. It reconstructs the social history of this tiny but important colonial city by analyzing court records and correspondence between Bathurst Muslims and British colonial officials. The study focuses on The Gambia's colonial period – the period when the region was under the British Crown, 1900 -1970.[7] Civil court transcripts provide an unparalleled opportunity to explore the divergence between "tradition" and change that occurred in these areas during the first half of the twentieth century. They also reveal ways in which Gambians – both men and women – forged multiple and sometimes conflicting positions for themselves in relation to Islam and to the colonial enterprise. Some of these include issues of patriarchy, marriage, and divorce, matters which found their way to the courts.

My study seeks to address issues of efficacy in an institution wedged between on the one hand Islamic and "customary laws" and on the other between Islamic and European judicial systems. It speaks to changes brought about by the imposition of colonial rule in the legal landscape in a predominantly Muslim society. It examines ways, extent, and limitations to which the Muslim court served as an instrument of conflict resolution (between individuals, families, and communities) in a predominantly Muslim society even though non-Muslims permitted the establishment of these courts. For example, did the Qadis favor women's claims against their

[7] On February 18, 1965, the Gambia gained independence from Britain and became a Republic on April 24th, 1970.

husbands or did they reinforce inequalities between wives and husbands within the household or in the larger Gambian society? To what extent did the British appeals court influence the decisions made at the Qadi courts and how did the appeals court create opportunities for the establishment of equal rights for Muslim men and women?

By focusing on the history of the Muslim court of Bathurst and "native" courts in order to investigate the effects of the new legal setting and to reconstruct the social history of Bathurst and its environs, the dissertation makes four important arguments. First, I argue that through the numerous Muslim court and "native" court records, it is possible to reconstruct the history of the Muslim community in Bathurst and the Gambia at large – a community that is overlooked in the Islamic historiography of the Gambia. By looking at these records, one can reconstruct patterns of marriage, divorce, child custody, inheritance, and other social relationships in this largely Muslim society. The court transcripts reveal detailed information about challenges faced by women within the household, many of whom were not reluctant to bring personal issues to the courts. The records also provide insight into the ways that Muslim judges interpreted the law, which often reveals a great deal about their educational background, their *tarikh,* and how they used their position as influential members of the Muslim community and the colonial society in which they lived.[8]

Second, an examination of the history of the Muslim court of Bathurst reveals that the Muslim population of this colonial town was a fractured community. It was a community in which individuals were divided and where debates often arose over leadership issues such as

[8] Tarikh here refers to order. It could also mean history or chronicle. The two main *tarikhs* in the Senegambia are the Tijaniyyaa and Qadiriyya (including Murridiyya). The Qadiriyya and the Tijaniyya are two popular Islamic orders which gained currency among the Wolof during the eighteenth and nineteenth centuries respectively, as most local clerics embraced either one or the other.

Qadiship, management of the Muhammedan School, Imamship of the Bathurst Mosque, and political representation in the legislative council. It was also a community where intra–Muslim cleavages and gender conflicts tended to sever relationships between husbands and wives, and children and their parents.

The documents also highlight the complexities of Euro-African relations, particularly relationships between larger Islamic groups and British colonial officials in negotiating the legal terrain set up by the British. The British responded to some of these problems because they were concerned about maintaining law and order. Though the court was created with jurisdiction over family matters, some colonial authorities were ambivalent towards it. At times, the court's decision was overshadowed by the higher Court of Appeals where "Islam had no place." These uncertainties show that in the Gambia colony, the British did not have an official Islamic policy towards their dealings with the Muslim communities like their counterparts in French Senegal. However, the English Governor-Generals and their subordinates were always eager to devise ways to effectively deal with their Muslim subjects. For example, the colonial state often yielded to some Muslim demands by supporting, for example, the building of the Bathurst Mosque, Muhammedan (English & Arabic) School, and Muslim courts. In creating these institutions, the government was ensuring local support from its diverse Muslim population, who by 1905 already constituted a majority in Bathurst.

Third, this dissertation highlights the interconnectedness of the Senegambia to the wider Islamic world or what is known as "trans-national Islam."[9] For instance, many of the Qadis in

[9] Mahir Saul characterized this as the "Mediterranean World of Islam. See Mahir Saul, "Islam and West African Anthropology," *Africa Today*, 53, 1 (2006): 7. See also John Hunwick and Eve Trout Powell, *The African Diaspora in the Mediterranean Lands of Islam* (Princeton: Markus Wienner Publishers, 2002).

the Gambia studied abroad at renowned Islamic centers in North Africa and in the Middle East, thereby influencing religious and theological ideas and practices of the local development of Islam in the Gambia. Further, appeals cases in the Gambia at times established legal precedencies used by other European colonial powers in Muslim societies, and vice versa. In this way, both the people and legal issues in Senegambia continued to be connected to the wider Islamic world.

Finally, this study demonstrates that twentieth century colonialism further disrupted a society that was already fractured by years of conflict between Muslims and non-Muslims. Moreover, it shows divisions brought about by wars of European conquest in the Gambia. These issues include the disaggregation of kin groups and families and the changes in the definitions of rights that developed in response to the pressures of taxation, cash cropping, and urban and rural wage labor employment. Related to these ideas are issues of changes in identity, individuation, and the weakening of marriage bonds. For example, many of the Muslim and "Native" court cases I examined show that most women went to the courts to seek divorce either for lack of maintenance and maltreatment or because the husband had abandoned his wife and family.

Historiography

By the early nineteenth century, European powers in Africa were preoccupied with issues of how Africans could be governed. To achieve their intentions, European powers introduced systems of administration for each colony. In some colonial territories, the Europeans employed direct rule (for example, the French) – where Europeans were fully in charge of administration. The British practiced indirect rule – the principle of ruling through existing traditional

administrative structures, while the colonial authorities remained overseers.[10] The British moved quickly to work with Muslim structures they found in place to begin creating the "colonial state." Murray Last, writing on northern Nigeria, suggests that since Islamic political culture puts special focus on community leaders for setting moral standards and the rule of law, it was not difficult for the British to co-opt them into the new structures.[11] Hence, British administrators worked with Africans whom they assumed were knowledgeable of codified "customary law," and then called on judges they appointed to apply it.[12] In Muslim areas, that law was *sharia,* and was applied in Muhammedan or Qadi courts that to this day oversee civil disputes.[13]

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[10] For more on colonial systems of administration, see Michael Crowder, *West Africa Under Colonial Rule* (Evanston: Nortwestern University, 1968).

[11] Murray Last, "The Colonial Caliphate of Northern Nigeria," in Le *Temps des Marabouts: Itineraries et Strategies Islamiques en Afrique Occidentale Francaise, v.1880-1960*, ed. David Robinson and Jean Triaud (Paris: Karthala, 1997), 67-82.

[12] For more on how colonial officials attempted to work with Muslim societies, see David Robinson, "France as Muslim Power in West Africa*," Africa Today*, 46, 3/4 (1999): 105 – 127. For how colonial administrators codified African "traditions" and created "new" ways of administration, see Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia,* (Cambridge: Cambridge University Press, 1985); Kristin Mann and Richard Roberts, eds., *Law in Colonial Africa*, (Portsmouth, NH: Heinemann, 1991).

[13] In Islam, believers subject themselves to Islamic law, that is the S*haria* (way or path), which are divine revelations in the Holy Quran and the example set forth by Prophet Muhammed, *Hadith or Sunnah* (words and deeds of Prophet Muhammed). In addition, Muslims also rely on the consensus of religious leaders, comparisons from the Quran, *Hadith* (*Sunnah)* or reasoning to mitigate or to render justice. *Sharia* cannot be changed. For notes on Sharia, see Tijani Muhammad Naniya. "History of the Shari'a in Some States of Northern Nigeria to Circa 2000," *Jouranal of Islamic Studies* 13, 1 (2002): 15. Tijani notes that for Muslims, the *Sharia* represents the "way of religion" that "the Quran (45:18) enjoins for the whole of life, collective and individual. It defines crimes and punishments, regulates contractual relationships, and provides guidance and a legal framework for relations with non-Muslims within its jurisdiction, and relations with societies and states beyond its jurisdiction." The *sharia* also comments on how morals and ethics should be conducted in an Islamic society, including moderation, contentment, and sincere belief in the will of God and *sunna* of prophet Muhammad. The *sharia* also "accommodates the diversity of local cultures and conditions on the basis of the Quranic verse

In the Gambia, the Muslim court became an important feature of British colonialism as an instrument of conflict resolution. As part of efforts to maintain peace, the court was created to assist in the administration of justice in the British colony. But in spite of their role in the day-to-day running of the Gambia colony, these courts have not been seriously studied by historians. Instead, studies of Islam and Muslim communities in what became the Gambia colony and protectorate have tended to focus on the role of clerics in the spread of Islam and the nineteenth century religious uprisings.[14] An examination of the context, nature, and consequences of the Muslim courts widens the lens through which the history of African interactions with Islam and European colonialism can be studied. Also, a focused study such as this can broaden the scope of investigation to examine the history of a neglected institution such as the court and ways in which post-colonial scholarship have marginalized some locally positive impacts of colonialism.

Scholars of Senegambia have discussed other aspects of the region's history rather than the history of the Muslim courts. For example, J. M. Gray's work is a general history of the Gambia beginning in the 15th century when the Portuguese first began to trade with the region. This history focuses on the rivalries between the trading nations of Europe (the Portuguese, the Dutch, the Spanish, the British, and the French). Gray also details the militant Muslim

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(5:48), which affirms that God has appointed to every people "a law and a way of life," and he has not willed to make "you a single community."

[14] For example, see the works of Harry Gailey, *A History of The Gambia* (London: Routledge and Kegan Paul, 1964); J. M. Gray, *The History of The Gambia* (London: Cass., 1966); Charlotte A. Quinn, *Mandingo Kingdoms of the Senegambia: Traditionalism, Islam, and European Expansion* (Evanston: Northwestern University Press, 1972); Donald Wright, *The World and a Small Place in Africa: A History of Globalization, The Gambia (*New York: M. E. Sharpe, 2010); Alice Bellagamba "Slavery and Emancipation in the Colonial Archives: British officials, Slave Owners, and Slaves in the Protectorate of The Gambia, 1890 -1936," *Canadian Journal of African Studies,* 39, 1 (2005): 5-40; Lamin Sanneh, *The Jakhanke Muslim Clerics: A Religious and Historical Study of Islam in Senegambia* (Lanham, MD: University press of America, 1989).

revolutions in the Gambia from 1850-1901. As a colonial magistrate himself, Gray provides a rich overview of the colonial history of the Gambia.[15] Charlotte A. Quinn's work on the nineteenth century Muslim revolutions in the Mandinka kingdoms of the Gambia River region still remains the most illustrative study of the Islamic uprisings in the Gambia territory. Her scholarship also takes into account the increased European presence in the region and the economic dislocation precipitated by Europe's attempt to suppress the slave trade.[16] Philip Curtin's study on the economic changes in the Senegambia region during the era of the slave trade shows centuries of economic and commercial connections between north Africa and other parts of Africa, particularly Senegambia, and how these connections have been fostered by the spread of Islam and by Arab migrants.[17] Donald Wright examines the context in which Niumi, an area in the Gambia, became integrated into large economic complexes brought about by the arrival of Europeans in the Gambia and how the region was incorporated into an ever-growing world market or world system, which has affected the way people have lived for a long time in Niumi. Wright also looks at Niumi's contact with Islam and the revolutionary changes that followed this interaction in the world during colonialism.[18] While making good use of these earlier works, my project is unique in that it examines the underutilized court records and shows how Muslim men and women reacted to European legal systems through Islamic and "customary" laws, as well as how the Qadis applied "customary laws" and the *sharia.*

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[15] Gray, 1966.
[16] See Quinn, 1972.
[17] Philip Curtin, *Economic Change in Pre-colonial Africa: Senegambia in the Era of the Slave Trade* (Madison: University of Wisconsin Press, 1975).
[18] Wright, 2010.

In discussing how Senegambian women used the courts to seek redress of real and perceived injuries, it needs to be understood that the courts existed in a colonial system. Scholars have maintained that the position of most women declined under the aegis of colonialism both because of its sexiest bias and because women were members of politically dominated and economically exploited territories. European colonizers hailed from societies that had rejected prominent and public political roles for women and that empowered men to represent women's interest. These scholars see colonialism and colonial rule as systems that controlled and exploited African women and men with adverse consequences for women.[19] Recently, Emily Osborn shows how colonial occupation in Guinea rewarded men with authority and furthered the domestication of women – as dependent accessories of their male relations.[20]

There is no question that colonial officials and African elders, including local authorities, sought to establish control over women and young people, but it is essential to recognize that women also used the courts and law to their advantage, as demonstrated by Richard Roberts and many other scholars.[21] Osborn sees these initiatives limited – because in Guinea, the French did

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[19] See Josephine Beoku-Betts, "Western perceptions of African women in the 19th & early 20th centuries," in *Readings in gender in Africa*, ed. Andrea Cornwall (Bloomington, Ind.: Indiana University Press, 2005), 20-31; Gertrude Mianda, "Colonialism, Education, and Gender Relations in the Belgian Congo. The Évolué," in *Women in African Colonial Histories,* ed. Allman, Jean. Nakanyike Musisi and Susan Geiger (Bloomington, IN: Indiana University Press, 2002), 144-163; Iris Berger and E. Frances White, *Women in sub-Saharan Africa: restoring women to history* (Bloomington: Indiana University Press, 1999), Ix; Dorothy Hodgson, and Sherly McCurdy, *"Wicked" Women and the Reconfiguration of Gender in Africa*. (Portsmouth, NH: Heinemann, 2001).

[20] Emily Lynn Osborn, *Our New Husbands are Here: Households, Gender, and Politics in a West African State from the Slave Trade to Colonial Rule* (Ohio University Press, 2011), 146-147.

[21] Richard Roberts, "Representation, Structure and Agency: Divorce in the French Soudan During the Early Twentieth Century," *Journal of African History,* 40 (1999): 389-410; See also,

not see divorce as a way to emancipate women, or empower them to become autonomous, self-determining agents who could make their way independently in the world as equal to men.[22] However, Thomas McClendon recognizes that "while the patriarchal alliance of African men and the state used 'customary law' as a vehicle to refashion rural traditions and bring African women under control, women and other subalterns found, ironically, that white-staffed customary law courts sometimes provided an opportunity to escape rigid control, for instance by divorcing abusive or neglectful husbands."[23] In examining African women's experiences in, and interaction with colonialism, Jean Allman, Nakanyike Musisi, and Susan Geiger caution that reducing African women's experiences under colonialism as universal does not do justice to their multifaceted, complex, and personal experiences. This reveals that their experiences under colonialism were not homogeneous but were instead shaped by multiple forces and agendas.[24]

In colonial Bathurst, a cross-section of women took advantage of opportunities provided by the colonial administration to take their cases to the Muslim court where they challenged patriarchy and issues of property rights, marriage, and divorce. Colonial and Islamic laws enabled women to not only divorce their husbands, but to own and maintain property. The history of the courts further demonstrates that early in the twentieth century, Gambian women were active in challenging male dominance in the public sphere (such as at the Bathurst market) and in family affairs by questioning property rights and related issues. Gambian women not only

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Thomas v. Mcclendon, "Tradition and Domestic Struggle in the Courtroom: Customary Law and the Control of Women in Segregation-era Natal," *The International Journal of African historical Studies,* 28, 3 (1995): 527-561.

[22] Osborn, 2011, 148.

[23] MacClendon, 1995, 527.

[24] Jean Allman, Nakanyike Musisi and Susan Geiger, eds. *Women in African Colonial Histories* (Bloomington, IN: Indiana University Press, 2002), 1.

organized mass demonstrations against price increases in the 1920s, but also frequented the courts to claim their marital rights, social relationships, and to mend conflicts within the family.

This study fits within a broader body of work that, since the 1970s, increasingly focuses on women's roles including those on women in Islamic societies in the region. Some of these studies on women and gender revealed women as active participants in their various societies as they did not only negotiate their social, political and economic status in society but also used outright protest to achieve their goals. As Hodgson and McCurdy note, women challenged the boundaries of discourse and authority which they either entirely transformed or molded into space for negotiating cultural power. They show that the difficult situation women find themselves in sometimes help them to develop multiple strategies to cope with the disparity imposed on them by religion, patriarchy, or economic conditions.[25]

In spite of this rich scholarship, no scholar has studied the courts in the Gambia to try to understand issues of women within Islam. For example, Judith Carney and Michael Watts's work focus mostly on issues of contestation over resources in the Gambia, particularly land and labor.[26] In fact, most of the scholarship that deals with women's relationship to men concerns

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[25] See Hodgson, and McCurdy, 2001; Barbara Callaway, *The Heritage of Islam: Women, Religion, and Politics in West Africa* (Boulder, Co: Lynne Rienner, 1994). Barbara Cooper, *Marriage in Maradi: Gender and Culture in a Hausa Society in Niger*, *1900-1989* (Portsmouth, NH: Heinemann, 1997); Lucy Creevey, "Islam, Women and the Role of the State in Senegal," *Journal of Religion in Africa,* 26, 3 (1996): 268-307; Beth Buggenhagen, *Muslim Families in Global Senegal: Money Takes Care of Shame,* (Bloomington: Indiana University Press, 2012); Dorothea E. Schulz, *Muslims and New Media in West Africa: Pathways to God*, (Bloomington: Indiana University Press, 2012); Adeline Masquelier, *Women and Islamic Revival in a West African Town*, (Bloomington: Indiana University Press, 2009).

[26] Judith Carney and Michael Watts, "Disciplining Women? Rice, Mechanization, and The Evolution of Mandinka Gender Relations in Senegambia," *Signs. Journal of Women in Culture and Society,* 16, 4 (1991): 651-681. See also Richard A. Schroeder, "Gone to Their Second

the question of land claims, issues of patriarchy, and property rights within the household. This study on the courts promises to add to this growing literature and offers a different perspective on gender relations in the Gambia by exploring the subject of Islam, family law, marriage and divorce, child custody, and contestations over other property rights issues.

My dissertation also speaks to the question of African agency under colonial rule, a subject which has been much discussed by historians of colonial Africa.[27] While some have viewed Africans as passive under European colonial domination, and colonialism in Africa as an edifice imposed by Europe, the new historiography of colonialism in Africa tends to depict imperialism as nothing more or less than cultural exchanges – a process of mediation, dialogue and engagement, in which Africans and Europeans were more or less equals. For instance, Robinson and Gallagher claim that the impetus for expansion came from both the European metropolis and from the colonial communities. They argue that no one system could coordinate or comprehend this world-wide profusion of expansive activities. Although governments often used or regulated its processes, they were usually unplanned and beyond official control.[28] Frederick Cooper also suggests that Europe's contradictory colonial policies in Africa "made the

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Husbands": Marital Metaphors and Conjugal Contracts in The Gambia's Female Garden Sector," *Canadian Journal of African studies,* 30, 1 (1996): 69-87.

[27] For questions on colonialism, see Femi J. Kolapo and Kwabena O. Akurang-Parry eds., *African Agency and European Colonialism: Latitudes of Negotiation and Containment: Essays in Honor of A.S. Kanya-Forstner* (Lanham, Md.: University Press of America, 2007); Anne Phillips, *The Enigma of Colonialism: British Policy in West Africa* (London; J. Currey; Bloomington: Indiana University Press, 1989); L. H. Gann and Peter Duignan eds., *Colonialism in Africa*, 1870 – 1960 (London: Cambridge University Press, 1960); Michael Crowder, *West Africa Under Colonial Rule* (Evanston: Nortwestern University, 1968); Terence Ranger and Eric Hobsbawm eds., *The Invention of Tradition* (Cambridge and New York: Cambridge University Press, 1983).

[28] Ronald Robinson and John Gallagher, *Africa and the Victorians: The Climax of Imperialism in the Dark Continent* (New York: St. Martin's Press, 1968), 9.

space of empire into a terrain where concepts were not only imposed, but also engaged and contested."[29] European colonies in Africa and their subjects shaped each other over time. Hence, historians like Cooper claim that "to trace history to imperialism is to give power to a phenomenon that is historically located." He writes that "the question such an observation leaves is whether it is enough to name more searching examination, which in some form is historical."[30]

The idea of "Paths of Accommodation" on which David Robinson has commented in the Senegalese context, is also adapted in this study. Writing in 2000, Robinson portrayed the interactions between African clerics in Senegal and the French colonial authorities as one of accommodation.[31] His book, *Paths of Accommodation,* is about the exercise of power in a colonial context – how France came to patronize a variety of Islamic institutions and how conquered Muslim populations, through their own institutions, came to accommodate themselves to being ruled by non-Muslims. These "paths of accommodation," he claims, required, on all parts, the patient construction of new conceptual frameworks, based on an accumulation of knowledge and experiences. In recounting this process, Robinson explores a number of key themes: the relationship between knowledge and power, the importance of agency and identity construction, and capital accumulation (including the accumulation of social and symbolic capital).

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[29] Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History*, (Berkeley: University of California Press, 2005), 4.

[30] Cooper, 2005, 14.

[31] David Robinson, *Paths of Accommodation: Muslim Societies and French Colonial Authorities in Senegal and Mauritania*, 1880-1920 (Athens: Ohio University Press, 2000).

Beyond the subject of collaboration, some scholars see colonialism as an exploitative mission in Africa because Europeans were the invaders, the governors, and virtually had all the political and economic privileges that placed them on top of their African subjects. As Robert I. Rotberg notes, "the course of tropical African history" was transformed when European nations imposed their hegemony on Africans.[32] Likewise, Donald Wright's work on Niumi, a Gambian state, shows that from about 1880, the decisions affecting the livelihoods of people in that state were no longer coming from within the region, but from the metropoles of Europe. In other words, as part of a tiny riverine state within the British Empire, Niumi's niche in the world system would be defined by its production of peanuts and its consumption of manufactured goods. He shows that by the end of the century, the ancient polity had become so economically and politically weak, and so dependent on its role in the global economy, that Niumi quietly relinquished its sovereignty to Great Britain.[33] The differences in how colonialism and colonial rule was implemented require that particular attention be paid to each local situation, as I examine in Chapter Four.

My dissertation benefits from earlier works in many ways. For example, I gained insight from the analysis David Robinson offers in his "French 'Islamic' Policy and Practice in Late Nineteenth-Century Senegal" where, unlike the British in the Gambia, the French moved to develop a consistent Islamic policy for that country.[34] These works shaped the direction of my study in the way Islamic clerics carved their own space and crafted ideologies to attract

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[32] See Robert I. Rotberg, *A political history of tropical Africa* (New York: Brace & World, 1965).

[33] Wright, 2010.

[34] David Robinson, "French 'Islamic' Policy and Practice in Late Nineteenth Century Senegal," *The Journal of African History,* 29, 3 (1988):415-*435.*

followers.[35] These works also helped me to grapple with issues that underlay the Muslim – European rivalries in the Senegambia region and the setting in of colonial rule.

Indeed this project follows recent historiographical trends that underline the importance of using judicial records to better understand African social history.[36] Court transcripts provide a window of opportunity for historians and legal scholars to examine disputes in society and uncover the voices of disadvantaged individuals and groups. Some scholars have turned their attention to court records to try to understand relations between individuals and communities and the transformations that have resulted from these encounters.[37] Researchers have come to understand that court records provide insight into the activities of individuals and community groups.[38] Court records also offer a unique and interesting dimension to the investigation of the relationship between different social groups. They reveal struggles between men and women, elders and youths, and elites and less privileged people, because courts provide sites where conflicts are resolved or negotiated.[39] The study questions how conflicts are related to marriage, inheritance, child custody, and property rights. Because these types of conflicts are often

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[35] See Wright, 2010; Quinn, 1972; Sanneh, 1989.

[36] Roberts, 1999; There is also a growing body of legal anthropology in Muslim societies. For example, see John R. Bowen, *Islam, law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003); Lawrence Rosen, *Bargaining for Reality: The Construction of Social Relations in a Muslim community* (Chicago: University of Chicago Press, 1984); Rubya Mehdi eds. *Law and Religion in Multicultural societies* (Copenhagen: DJØF Pub., 2008).

[37] Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912* (Portsmouth, NH: Heinemann, 2005). See also Benjamin N. Lawrence ed. *Intermediaries, Interpreters, and Clerks: African Employees in the Making of Colonial Africa* (Madison: The University of Wisconsin Press, 2006).

[38] Allan Christelow, *Thus Ruled Emir Abbas: Selected Cases from the Records of the Emir of Kano's Judicial Council* (East Lansing: Michigan State University Press, 1994).

[39] Roberts, 1999.

gendered, understanding the way they are resolved in Muslim courts lends insight into the interpretation of men and women's rights.

Importantly, efforts at conflict resolution and management by international, local non-governmental organizations, and states tend to focus on open conflicts, while paying little attention to conflicts at the family and community level.[40] The last few decades have seen the development of different models of conflict resolution motivated by the international failure to address conflict.[41] This research focuses on civil conflict within the family as a microcosm of similar conflicts across society. Occasionally, some of these family conflicts were brought to Muhammedan courts, and therefore they are available for closer examination.

Despite a surge in the interest to understand African societies through court records, scholars to date have overlooked court records in the Gambia. The court records have been unavailable and uncatalogued and were therefore not easily accessible. This historiographical vacuum makes it more pressing to widen the scope of investigation and rethink the historiography of Islam in West Africa. My dissertation is an attempt to fill this gap. While my study focuses on the Muslim Court, it also speaks to broader African issues such as colonialism, gender issues, and property rights.

From the 1950s a number of works in other parts of Africa looked at African "customary law," the Islamic law, and European law. Some works discussed how "customary law" could be

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[40] J. Boyden & Gibbs, S.) *Children and War: Understanding Psychological Distress in Cambodia* (Geneva: UN, 1997).

[41] For examples, see the works of Helena Cornelius and Faire, Shoshana *Everyone Can Win: How to Resolve Conflict* (Brookvale, NSW: Simon and Schuster, 1989); R.J. Fisher, *Interactive Conflict Resolution* (Syracuse: Syracuse University Press, 1997); R.J. Fisher, and W. Ury, eds., *Getting to Yes: Negotiating Agreement Without Giving In.* New York: Penguin, (1991); Mary B. Anderson, *Do No Harm: How Aid Can Support Peace - or War* (Lynne Rienner Publishers Inc, US, 1999).

codified and applied in a formal court system.[42] E. A. Keay and S. S. Richardson's work in northern Nigeria also sought to describe the establishment, constitution, and jurisdiction of native and customary courts and described the law applicable in the native courts, the system of control and review of decisions, as well as a guide to the civil and criminal procedures in these courts in each region of Nigeria.[43] By 1985, scholars began to turn their attention to the development of legal traditions and the consequences of African and European encounters. During these encounters, Europeans adopted conflicting approaches to African Muslims as each colonial power devised strategies to suit their policies. Christelow shows that the French insistence on the adherence to standardized procedures and a well-defined hierarchy of appeal deprived the judicial process of its flexibility, the impact of which was felt more in the West of Algeria, where disputes not properly settled quickly turned to violence.[44] In the Horn of Africa, the Italian officials carried out a process of centralizing Muslim court systems in Somalia and Eritrea, while superimposing Italian courts at the higher level, along lines similar to French North Africa.[45] Allan Christelow also examines the status of Islamic law at a time when Muslims in many parts of Africa dealt with growing European military and economic pressure. During this encounter, Europeans adopted conflicting approaches to Muslims as each colonial power devised strategies to suit their policies.

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[42] Max Gluckman, *The Judicial Process Among the Barotse of Northern Rhodesia* (Manchester: University of Manchester Press, 1955); See also Chanock, 1985.

[43] E. A. Keay, and S. S. Richardson, *The Native and Customary Courts of Nigeria* (London: African Universities Press, 1966).

[44] Allan Christelow, "The Muslim Judge and Muslim Politics in Colonial Algeria and Senegal," *Comparative Studies in Society and History*, l, 24, 1 (Jan, 1982): 3-24.

[45] Allan Christelow, *Muslim Law Courts and the French Colonial State* (Princeton, New Jersey: Princeton University Press, 1985).

From the 1990s however, scholars began to seriously examine court records to try to understand their usefulness for African social history. Susan Hirsch's work contributes to an empirically grounded understanding of law reform internationally initiated in the context of local communities that also have their own norms and values. For example, Hirsch's study makes a special contribution to the understanding of the Qadi courts, positioned within "multiple webs of power" in contemporary Kenya, as a forum that became sympathetic to women's claims - Muslim women actively used legal processes to transform the religious and local cultural norms that underlined their disadvantaged position in the Muslim community of post-colonial Kenya.[46]

Other scholars have focused on the roles played by African employees in the making of colonial Africa. For example, Benjamin N. Lawrence et al. examine how intermediaries "who were almost without exception male, influenced colonial rule because they shaped the interactions of subject populations with European officials."[47] Many of these works described the intentions and perceptions of the British, particularly in creating the dominant part of the colonial legal environment that shaped African possibilities and responses. Although colonial authorities did not have a definitive official policy towards their dealings with the Muslim communities, they carried out what I characterize as "charm offensive" – a strategy usually devised by colonial authorities on the ground to win the hearts and minds of Muslims. As such, both the colonial authorities and the Muslim communities by deed and words made conscious efforts to allay each other's fears. For instance, colonial authorities always insisted on "dealing

[46] Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Court* (Chicago: University of Chicago Press, 1998).
[47] Benjamin N. Lawrence eds., 2006.

with a united body of undivided Muhammedan Community."[48] In 1923, in another development, the Prince of Wales visited the Gambia and assured the Muslim Community the "freedom to worship the One true God," and extended a message of goodwill to Muslims for their loyalty to the King of England.[49] On the other hand, the Muslim community always pledged loyalty as Muslim subjects of a Christian government. Clearly, the colonial state always pledged neutrality in intra-Muslim disputes and upheld that government could not intervene in religious matters except where there was a breach of the peace.[50] In spite of efforts by both Africans and Europeans to work together, some colonial officials remained opinionated about the Muslim court. It was seen to be largely deciding nothing except how to end or mend unhappy marriages, and it was therefore not deemed necessary to constitute a special court to deal with such matters.[51] Such comments could imply that some officials did not regard marriage as an important institution or were weary of domestic complaints by Africans. Also, it could mean that the officials saw the court as inefficient.

The dissertation builds on existing historiography by combining court transcripts with oral histories to provide a route of inquiry into women and men's rights in twentieth century Gambia. In so doing, I discuss the interactions between the European and Muslim legal systems and how these interactions influenced the outcomes of family disputes in the Gambia. For instance, the court transcripts of the Muslim and "native" courts that I have studied bring into sharp focus the interaction of "customary," Islamic, and European law where litigants tried to

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[48] NRS, CS03/144, Muhammedan School.

[49] NRS, CS0 3/144 Letter from Jahumpa to Governor Denham, March 26th 1929

[50] NRS, CS03/144 Colonial Secretary to Ousman Jeng, 7th October, 1929

[51] NRS, CSO3/144, Muhammedan School.

find their way from one court to another. Analysis of the court records does not only reveal the disputes between Bathurst Muslims, but gives an insight to the voices of women in these courts. Women went to the courts for various issues ranging from domestic violence to matters of beautification – that is, women who sought divorce because their husbands would not buy them jewelry.

In similar ways, the oral history interviews I conducted provide valuable information on how a qadi's personal background could influence the outcome of cases they handle. The interviews also illustrate some of the changes that have taken place with regards to the way qadis make their judgments. Many of my informants pointed out that their educations outside The Gambia in formal institutions help them better to weigh cases.

Native Court Systems: Coming to Terms with *Sharia* and English Law

Colonialism and colonial rule presented Europeans with not only the task of developing the conquered territories for economic exploitation, but also administering these colonies by instituting what Europeans considered law and order. The British ruled indirectly through local authorities headed by local leaders. After the conquest of northern Nigeria, Lord Frederick Lugard, in *Political Memoranda,* outlined policies of Indirect Rule in British colonial Africa. Indirect Rule was already tested in India and Lugard had also applied the system in East Africa. Lugard reasoned that Africans, as "natives" should rule themselves through their own institutions and leaders. For Lugard, this scheme would make colonial administration easier, reducing the burden on overstretched and underfinanced colonial staff. It would also enhance peace and security since communities would deal directly with their leaders.

In the early 1900s, in northern Nigeria, the doctrine and mechanisms of indirect rule were practiced by which the new British administrative system needed to operate superimposed or in tandem with "native" systems where possible. According to Frederick Lugard:

> The British government would be the Suzerain of the country, but would retain the existing rulers, exercising the right to appoint not only the emirs but the chief officers of the state. The rights of succession, nomination, or election customary in the country would not as a rule be interfered with, but the high Commissioner would retain his right of veto, and the king or chief would lose his place by misconduct. Similarly in the matter of justice: Mohammedan law, so long as it was not contrary to the law of the protectorate, would not be interfered with, and the Emir's and Alkali's courts would be upheld and strengthened under the supervision of the resident.[52]

As was the case in northern Nigeria, in early twentieth century Gambia, the use of some aspects of both European and Islamic law became common both in the colony and protectorate. In the colony, the English had created the Muslim court. In the protectorate where Alkaides, now Alkalos, had long consulted their Almamys or Imams in times of deciding on cases by the use of *sharia* law, the English instituted "native" courts as part of their efforts to control and maintain what they considered law and order. For example, the chiefs who were presidents of these "native" courts played important roles in the execution of the British indirect rule system. In these "native" courts, the courts relied on a mixture of *sharia*, "customary," and English laws.

This mixture meant that court litigants in the colony navigated the dual legal terrain of Muslim or *sharia* law vs. English law, for example, as an attempt to achieve a legal way out of untenable marriages. One of the stories I provide in this study illustrates the complexities that arose from religious based marriages, especially when one of the spouses wished to revert to

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[52] Frederick Lugard. *The Political Memoranda: revision of Instructions to Political officers on Subjects Chiefly Political and Administrative* (Frank Cass and Co. Ltd, 1970), 281. See also Lovejoy, Paul E. and Jan S. Hogendorn. *Slow Death of Slavery: The Course of Abolition in Northern Nigeria, 1897-1936 (*Cambridge: Cambridge University Press, 1993), 121.

their former religion in order to enter into a polygamous marriage. Examples like this reveal the legal dilemma posed by colonial rule, the desire to implant Western values while at the same time maintain aspects of Muslim or customary law in the colonies.

Another feature of indirect rule was that Africans employed in colonial services maneuvered and exploited the weaknesses in the European laws to satisfy their own agendas. As demonstrated by Kristin Mann and Richard Roberts,

> law was not a body of immutable rules, institutions, and procedures, but ... a dynamic historical foundation which at once shapes and is shaped by economic, political, and social processes ... law [was] not ... an impartial arbiter guided by fixed rules and procedures, but ... a resource ... used in struggles over property, labor, power, and authority. Nor were European authorities alone in making colonial law: both [Africans] and Europeans shaped the laws and institutions, relations and processes, and meanings and understandings of the colonial period itself.[53]

Some of the "native" court cases I reviewed have shown that under colonialism, Africans used law as a resource in struggles against Europeans and manipulated the law to their advantage. According to Mann and Roberts, "Legal rules and procedures became instruments of African resistance, adaptation and renewal, as well as of European domination. Customary law was thus forged in struggles over property, labor, power and authority within an interactive colonial legal system, African and European, Christian and Muslim, traditional and modern."[54] In The Gambia, the codification of laws in the colony solidified African customary practices, and also lessened the space in which Africans could maneuver.

The examination of both the Muslim and "native" courts shows transformations in that the establishment of these institutions introduced more "formal" ways of adjudication and

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[53] Kristin Mann and Richard Roberts, eds., *Law in Colonial Africa* (Portsmouth, NH: Heinemann, London: James Currey, 1991), 3-8

[54] Mann and Roberts, 1991.

brought about new forms of social and political relationships. However, the history of any courts in the Gambia should be understood against the background of colonial domination in which the British constituted the courts, laid down or oversaw the laws, appointed judges and governors, and police forces to administer the colony and protectorate.

In this study, I rely overwhelmingly on documentary (court transcripts) and oral sources to investigate the history of the Muslim court of Bathurst and the "native" courts. I draw from all these sources while seeking to use an interdisciplinary approach in my research.

Sources and Methodology

Archival Research

The advent of European exploration and colonialism generated a variety of written documents, most of which exist in forms of travelers' accounts, colonial correspondence, and government files. Edward Philips notes the preference African historians had for written documentation as opposed to oral history. Philips says for many years this bias left out parts of Africa that were non-literate.[55] Joseph Miller also notes that "documentary sources written by Europeans were alien and self-interested, as well as tainted by the use made of them in colonial and imperial history to lionize Europe's civilizing political mission around the globe."[56] Thomas Spears also sees these documentary sources as the biased history of European accounts, and therefore warns us to "critically examine these sources, requiring us to question its provenance,

[55] John Edward Philips, *Writing African History* (Rochester: University of Rochester Press, 2005), 2.

[56] Miller Joseph C., "History and Africa/Africa and History" *American Historical Review,* 104, 1 (Feb, 1999), 8.

who produced it, when and why."[57] Donald A. Ritchie notes that "although archival documents have the advantage of not being influenced by later events or otherwise changing over time, as an interviewee might, documents are sometimes incomplete, inaccurate, and deceiving.[58]

Like many other documentary sources, court records can at times also be limited due to the position of the qadi, his assessors, and interpreters within the community.[59] For example, in reading these records, one must consider how close the qadi and his assessors were to the case being judged, or to the litigants. Relationships in a community could influence decisions in court and impact the records positively or negatively. These relations could also lead to a lack of transparency or account for loss of detail in some cases. Also, interpreters may not have been knowledgeable in languages of the court (in this case, Arabic and English) or about the social and cultural contexts of the communities from which litigants came. In other words, it is difficult to know how much information is lost in interpretation and translation. Also, with regards to marriage, these court records do not tell us anything about how they were arranged before they could take place between a man and woman. Therefore, understanding the context and manner in which marriages were arranged is also important to understanding the complexities of divorce. Above all, the records do not tell about the nature or extent of problems between litigants outside of the court room.

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[57] Thomas Spears, "Approaches to Documentary Sources," in *Sources and Methods of African History. Spoken, Written, Unearthed*, ed. Toyin Falola, and Christian Jennings (Rochester, NY: University of Rochester Press, 2003), 169-170.

[58] Donald A. Ritchie, *Doing Oral History: A Practical Guide* (Oxford: Oxford University Press, 2003), 26.

[59] For an explanation of such limitations in documented sources, see Toyin Falola and Christian Jennings eds., 2003; Philips, 2005.

Those limitations notwithstanding, I utilized the unique and unused body of Muslim court records at the National Archives and Magistrate court in Banjul, including archival data on court cases; historic data on the establishment of the Muslim courts, and life histories on qadis; and information on past and current court cases. Because courts are places where disputes are presented, discussed, and resolved, an analysis of court records provides insight into men and women's negotiation of rights and power within the household and greater Gambian society.

Archival research took place mainly at the Gambia National Archives in Banjul, the Banjul Qadi Courts and the Kanifing Qadi Courts in Kombo, where data was collected on court cases relating to marriage, divorce, childcare and related property issues. Data was also collected on the factors leading to the establishment of the Muslim courts. This data provided historic depth to the study and contextualized past and current conflicts relating to family law in The Gambia.

The Muslim Court transcripts that I studied are not catalogued, which likely made their accessibility to researchers difficult. They are placed in different rooms at the Qadis' court in Banjul. The transcripts are bound together in hard cover, though some of the volumes show fragility. The transcriptions are in Arabic and English, especially from 1906 – 1916. All of the transcripts after 1916 exist only in Arabic. I became aware of the existence of these records a few years before beginning my graduate studies, during the time I served as director of research and documentation at the National Centre for Arts and Culture (NCAC), Gambia's sole cultural institution. The NCAC holds a depository of Gambia's oral history, and is in charge of the museums and monuments, performing arts and copyrights. In total, I reviewed 291 cases, and sought help from court scribes in the transcription or translation of them into Arabic. In general, I have based my analyses on Muslim court transcripts generated from 1905 -1928, annual reports

and colonial correspondences between 1900 and 1960, and district court records from 1965-1971. The cases and records examined during these periods are fairly representative of cases brought before the courts and more broadly of social change in the Gambia. The "native" court transcripts, including district and village courts as well as courts held by travelling commissioners, are all in English, catalogued and deposited at the National Records Service in Banjul. Volumes of court records also exist at the Magistrate Court where they hold a separate archive.

Court records are important sources for uncovering disputes in society, where and how disputes were resolved, and to hear the voices of the disadvantaged, as Susan Hirsch demonstrates in her work on Kenya. Hirsch explores how Swahili women in the Kenyan coastal cities of Mombasa and Malindi pursued marital disputes in local Qadi's (Islamic) courts. By focusing on the Malindi qadi's court, and through court records, court observations, and participation in everyday life in the community, Hirsch shows how Muslim women actively used legal processes to transform the religious and local cultural norms that underlay their disadvantaged position in this Muslim community of post-colonial Kenya.[60] Carol Dickerman also sees courts as centers of mediation in Usumbura, Ruanda - Urundi where relationships between the colonial administration and urban communities come into dialogue. Dickerman shows how the sometimes conflicting and sometimes coinciding interests of colonial administration, court, and community were expressed in three common causes of litigation; bride wealth, divorce, and consensual unions. For Dickerman these particular kinds of disputes

[60] Hirsch, 1998, 3.

illustrate how the court affected marriage formation and norms of domestic conduct.[61] Allen Christelow's portrayal of Emir Abas's court in northern Nigeria also demonstrates how the newly created court under the purview of the British became a site for contestation and mediation.[62]

Oral History

In recent years, historians of Africa have emphasised an interdisciplinary approach to African history that permits engagement and dialogue with historical records and traditions. John Edwards Philip notes that "history is a conversation the present holds with the past. History therefore will always be a work in progress because the 'present' is continually becoming occupied by new generations. New evidence becomes available and new ways of thinking about evidence are developed."[63]

I have conducted the research in English, Wolof, and Mandinka, languages in which I have fluency. I initially planned to hire a female research assistant in order to facilitate interviews with women, since feminist research methodologies have shown how the positionality

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[61] Carol Dickerman, "African Courts Under the Colonial regime: Usumbura, Rwanda-Urundi, 1938-62," *Canadian Journal of African Studies,* 26, 1, (1992): 55-69. See also the work of J. N. Anderson, " Muslim Marriages and the Courts in East Africa," *Journal of Law,* 1, 1 (1957): 14-22; Thomas v. Mcclendon "Tradition and Domestic Struggle in the Courtroom: Customary Law and the Control of Women in Segregation-era Natal" *The International Journal of African historical Studies,* 28, 3 (1995): 527-561; Sally Falk Moore, *Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880-1980* (Cambridge: Cambridge University Press, 1986); Margaret Jean Hay and Marcia Wright, eds., *African Women and the Law: Historical Perspectives* (Boston: Boston University, African Studies Center, 1982).

[62] See Christelow, 1994.

[63] Philips, 2005, 4.

of researchers affects the outcome of the research.[64] However, a few weeks into the research I realized that there was no need since most of the Gambian Muslim women I interviewed were readily accessible and willing to talk to male researchers. This is perhaps due to the fact that unlike other Muslim societies where the boundary between men and women is strictly delimited, in the Gambia, among the majority of those who consider themselves Muslims, the men and women interact and work together in the same environment.

Beginning in the 1950s, historians of Africa came to realize that in order to turn away from exclusionary history and produce a responsive history that includes African voices, scholars need research strategies that start in Africa, historicize Africa's past, draw on African sources, and arrange the new information around historical hypotheses focused on concerns of Africans.[65] Scholars such as Jan Vansina suggest the use of oral history not only as a sub-field of history but as a major source.[66] This urge for the reconstruction of the African past made scholars turn to the field of oral history as a research method. Oral history was also soon complemented by new methods of archaeology, anthropology and ethnography, linguistic history, and environmental

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[64] Daphne Patai, "US Academics and Third World Women: Is Ethical Research Possible" in Sherna Berger and Daphe Patai eds., *Women's Words: The Feminist Practice of Doing Oral History*, 1991 (New York: Routledge, 1991).

[65] Miller, 1999, 8.

[66] Jan Vansina, *Oral Tradition as History* (Madision: The University of Wisconsin Press, 1985), 3. Vansina distinguishes oral history from oral tradition noting that while the former gets its sources from reminiscences, hearsay, or eyewitness accounts, the later is an information passed from mouth to mouth (memorized messages, memorized traditions, and everyday language), for a period beyond the lifetime of the informant.

history. These scholars also demonstrated the importance of oral history to African history, leading to a crucial development in African history methodology and conceptualization.[67]

Hence, in the 1960s, there was a search for authenticity in oral history as historical method which made historians of Africa recognize that oral sources should be read and tested in the light of diverse bodies of evidence from available documents. Jan Vansina's *Oral Tradition as History* is a pioneer in this direction. Jan Vansina demonstrates how oral historians construct their narratives, what evidential material they have at hand, and by what procedures they combine them into purported representations of the past. In addition, Vansina emphasizes the need for scholars to understand the message contained in a record. For Vansina, this requires the study of form and structure first because they influence the expression of the content.[68] The works have shown that oral history, when supplemented by other methods of historical enquiry, can produce a responsive history that includes African voices, draws on African sources, and articulates African concerns.

The use of oral history to investigate the social history of communities has been successful in several other research contexts as oral histories reveal historical processes that often do not appear in the written historical record.[69] By including women in my sample, I seek

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[67] See for example, Luise White, Stephan E. Miesher, and David William Cohen, *African Words, African Voices: Critical Practices in Oral History* (Indiana: Indiana University Press, 2001); Falola, and Jennings eds., 2003; Philips, 2005.

[68] Vansina, 1985, 68.

[69] Walter Hawthorne, *Planting Rice and Harvesting Slaves: Transformations Along the Guinea Bissau Coast, 1400-1900* (Portsmouth, NH: Heinemann, 2003). See also Vansina,1985; Robert M. Baum, *Shrines of the Slave Trade: Diola Religion and Society in Precolonial Senegambia* (Oxford: Oxford University Press, 1999).

to understand a previously overlooked perspective on the factors that create discontent in marriages, child custody issues, and disputes over inheritance and property rights issues.

The interviews included a life history component that explored qadis' personal histories as well as their own accounts of the history of qadi courts, their educational background, and information on some of the cases they have handled. Such histories are important for understanding a qadis' familiarity with Islamic law, which can influence judgments and the resolution of conflicts. Research has demonstrated that one's cultural, social, and personal experiences – the life history of individuals— can reveal details about an individual's life and her or his environment.[70] As Tilly notes, they can also "identify dominant social patterns.[71]

Focus group interviews were held in four clerical villages, Medina Seedia, Fass Sakho, Medina Seringe Mass and Pakalinding. These villages were selected as interview sites for various reasons. Most of the qadis, past and present living in the urban areas descended from or studied in Medina Seedia, Fass Sakho, Medina Seringe Mass. Therefore, in order to understand the qadis, it is important to know where they come from. I believe that it is important to look at the link between the Muslim courts and the production of qadis. Michael Peletz notes that the Muslim courts offer a unique and interesting dimension to the investigation of the relationship between different social groups as important institutions for the production and moulding of families and citizens. Though Peletz's work is on Malaysia, I argue that the same can be said of the clerical centres in many parts of the Gambia where students were and are molded in the

[70] Mirza Sarah and Margaret Strobel, eds., *Three Swahili Women: Life Histories from Mombasa, Kenya* (Bloomington: Indiana University Press, 1989).
[71] Tilly, Louise A., "People's History and Social Science History, " *Social Science History*, 7, 4 (1983):457-474

image of the cleric to maintain and continue the tradition of authority and power.[72] I chose Pakalinding because it was the seat of a "native" court for many years during and after colonial rule.

The focus group interviews included group discussions focused on a particular topic to stimulate discussion and to elicit descriptive data. The approach to focus groups was to utilize the Gambian institution of the "vous" whereby age mates or peers meet to discuss all manner of social topics and I selected the interview sites because of their reputation as clerical villages. At focus groups, conversations were broad but well defined.[73] This strategy allowed for in-depth discussions amongst community members about the significance and meaning of particular norms and values of Gambian society. For example, how do Gambians reconcile "customary practices" with *sharia* in a changing world? Focus group interviews also generated valuable information from qadis' assessors and other religious leaders of the community.

Participant observation included attending court cases at the Muslim court of Banjul. During these court sessions, I observed and noted the court proceedings and resolutions. I asked questions of litigants and witnesses.[74] In fact, all the court sessions I attended were cases in

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[72] Michael G. Peletz. *Religious Courts and Cultural Politics in Malaysia* (Princeton, NJ.: Princeton University Press, 2002).

[73] Susan C. Weller, "Structured Interviewing and Questionnaire Construction," in Bernard H. Russell eds. *Handbook of Methods in Cultural Anthropology* (Walnut Creek, Calif.: Alta Mira Press, 2000), 365-409.

[74] Dewalt and Bellie Dewalt, *Participant Observation: A Guide for Field Workers*, (NY: Alta Mira Press, 2002). Dewalt and Dewalt recommended a type of participant interview method that is passive – that is more of observation while keeping note of the happenings in the interview scene.

which women were seeking divorce or seeking maintenance from their husbands.[75] Personal reflections on experiences dealing with custody issues, inheritance, and rights were also recorded in a note book, which helped me to go back to the informants and verify some particular issues. After the transcriptions of the interview tapes, my jottings further enabled me to compare the results and facilitated follow ups.

Despite my ability to speak Mandinka and Wolof fluently and my nearly twenty years of experience of collecting oral history, I found my search for relevant information from descendants and acquaintances about the first generation qadis rather frustrating and at times fruitless, especially within Banjul and the surroundings. My attempt to gain insight about the life history of past qadis – educational background, schools where one studied, what subjects were studied, who the teacher was, and what cases have been handled and how they were resolved – all came to naught because the descendants or acquaintances could not provide any knowledge beyond family ties.

In the countryside, especially in clerical villages (villages established by clerics), my experience was completely different. Here, people tend to remember their past more vividly and often keep a record or two about particular issues such as family histories, settlement patterns, social and labor relationships.[76] Also, I found my interviews with present qadis about their lives – their educational background and the kind of cases they handled – enriching and fruitful.

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[75] During two of these court sittings, I participated in the consummation of marriage which the court also arranges.

[76] For example, in an interview with village elders in Medina Seedia, they were able to accurately tell us the trail of the founder of the village, his educational background, and the life span of all the village heads and Imams (religious heads) since the establishment of the village.

I conducted a total of 158 interviews, 100 of which were men. Part of the reason for this imbalance was that none of the Muslim judges were women. I draw from all these sources while seeking to use an interdisciplinary approach in my research.

Organization of the Study

In Chapter One, I give an overview of the geography, people, and history of the Gambia and then examine the development of Islam and the introduction of British colonialism in the Senegambia. I assess the impact of these two major phenomena on the communities and peoples of the Gambia. I argue that the Islamic judicial system and European law were complimentary, but at the same time contending and often contradictory. In fact, both Islamic and European law co-opted parts of the "customary" laws to fashion not only new legal traditions but also citizens who would be managed in desired ways.

In Chapter Two, I explore the growth and development of the Muslim Court and its judicial parameters – functions of the court and opportunities for appeal. It shows that the establishment of the Muslim Court by colonial officials marked a shift from "customary" laws to more formalized institutions. I investigate the establishment of the Bathurst Mosque and the Muhammedan School, which remained at the center of contestations in the intra – Muslim struggles. I argue that the creation of the qadi courts provided opportunity to individuals seeking redress, whether male or female, as well as to larger Islamic groups seeking to navigate the legal landscapes set up by the British. The British responded to some of these problems because they were concerned about maintaining law and order.

Chapter Three investigates the voices of women in the Muslim Court and discusses the disputes that emerged and the ways they were resolved. It also analyzes the transformations that

took place in the court, such as women taking advantage of the powers of the Muslim Court and British presence to bring their cases to the court. Hence, I also looked at how and why individuals take their cases to these courts. Who are the people who bring their cases before these courts? What do the court records tell us about the relation of the litigants to the rest of their communities?

Chapter Four deals with the history of the qadis, their educational background, and samples of cases they handled. In giving profiles or life histories of these selected qadis, I argue that the outcomes of some cases were at times influenced by the qadi's educational background and social ties in the community.

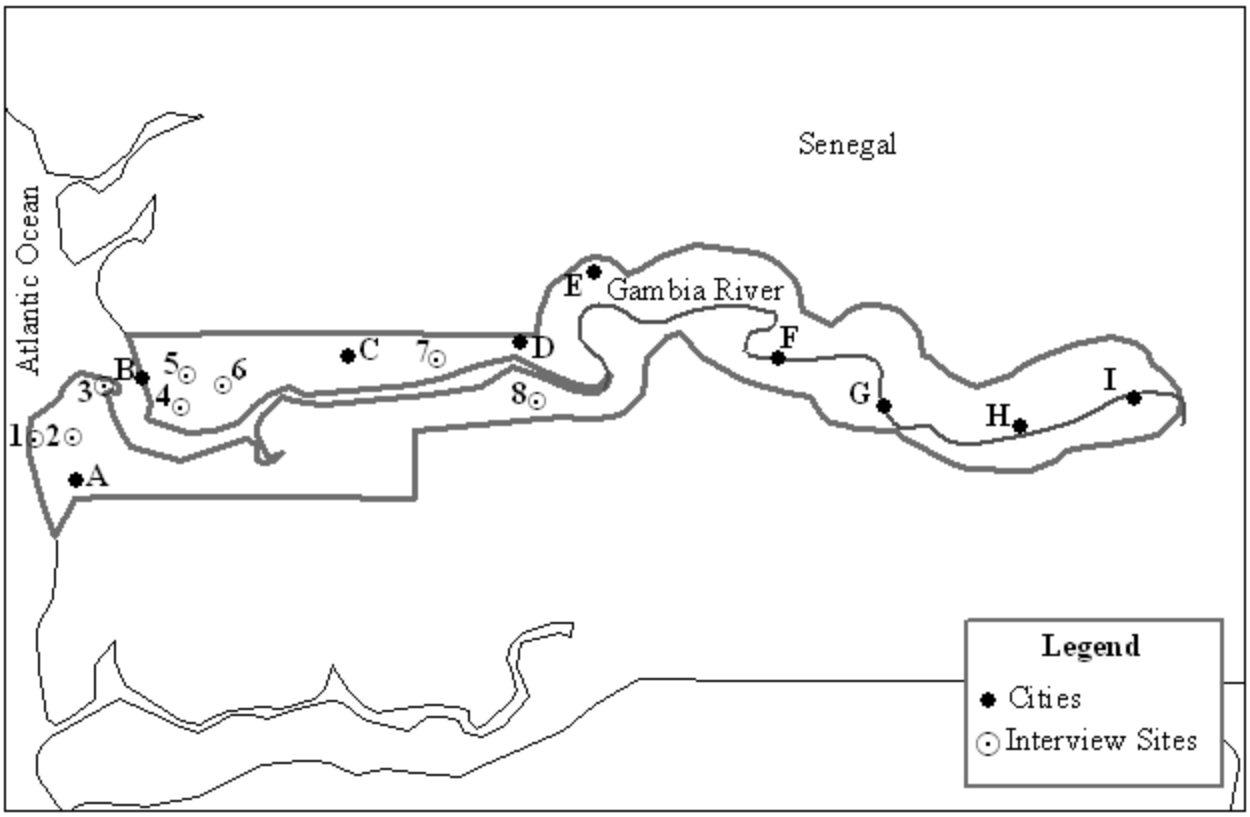
In Chapter Five, I explore cases in the "native" courts in order to compare the two judicial systems; one strictly *sharia* and the other a mixture of customary laws, *sharia,* and English law. When the "native" courts came into being, the British codified customary practices and limited the boundaries in which Africans could navigate. In spite of the immutability of the law, it is evident from the records that some Gambian colonial officials, such as local chiefs, took advantage of the weaknesses in the law and made their positions a source of personal aggrandizement. Other Gambian colonial officials would use personal contacts with some colonial officials in order to gain favors, while some would exploit the fractures within the colonial law to abuse the population, and then have to escape the wrath of the new laws by fleeing to the French territories.[77]

I conclude with a synthesis of the rapprochement between customary, Islamic, and European laws and consequently, the effect of the resulting laws, policies and practices on

[77] French territory is present day Senegal, a country which surrounded The Gambia on all sides except the Atlantic Ocean. The delimitation of formal boundaries between Gambia and Senegal in 1890s did little to curb the flow of citizens from one region to another.

present day Gambia. In essence, I explain how over time, Gambians have been able to navigate the new legal terrain and what transformations occurred as a result of Euro-African relations in the realm of law.

Figure 1: Map of the Gambia



Cities

A - Birikama
B - Barra
C - Kerewan
D - Farafenni
E - Kaur
F - Georgetown
G - Bansang
H - Basse
I - Fatoto

Interview Sites

1 - Backoteh
2 - Serrekunda
3 - Banjul
4 - Bakalarr/Medina Seedia
5 - Medina Seringe Mass
6 - Fass Omar Sahor
7 - Sallkenye
8 - Pakalinding

Chapter One
Background of the Study: Islam, Colonialism, and the Creation of Bathurst

A few years after its establishment in 1816, the tiny colonial city of Bathurst (now Banjul) was transformed into a multi-ethnic and multicultural society. The city's population included migrants from different cultural backgrounds comprised of Europeans, Lebanese, Syrians, Moroccans, and diverse groups of Africans. Some of these Africans were immigrants from Senegal, Mali, Guinea, Sierra Leone, and Nigeria, but most of them came from within the protectorate of the Gambia and they spoke Mandinka, Wolof, Jola, Serer, Fula, and Serahulle, among a number of languages. In addition, a small but sizeable group of Liberated Africans (often referred to as Akus) also formed part of the city's population.[1] Although most of the Aku, Serer, Jola and some of the Wolof were non-Muslims, the majority of the town's residents were followers of Islam. From its early years, the city could boast of Islamic schools called *Dara* (Wolof) where students learned the Quran and methods of the five daily prayers. The schools were headed by Islamic scholars, most of whom came from the protectorate and other parts of the West African sub-region.

In this chapter, I chart the broader transformations and developments in the early formation of Bathurst as a colonial city. In doing so, I provide general information about the city's social demography, its geographical location, and its links with the protectorate. Bathurst

[1] In The Gambia, the liberated Africans are often referred to as Aku, who speak English with a mixture of local languages. In other African, American, and Caribbean countries they are known as creole. For more on ideas and processes of creolization, see Charles Stewart ed., *Creolization: History, Ethnography, and Theory* (Walnut Creek, CA: Left Coast Press, 2007); James Sweet, *Recreating Africa: Culture, Kinship, and Religion in the African-Portuguese World*, 1441-1770 (Chapel Hill: University of North Carolina Press, 2003); Toby Green, *The Rise of the Trans-Atlantic Slave Trade in Western Africa*, 1300-1589 (Cambridge, New York: Cambridge University Press, 2012).

also became an attraction for various reasons including opportunities for salaried work, menial jobs, and social amenities (schools, hospital, and cinemas), created by the colonial presence. Due to these prospects, many of the agricultural people living in the protectorate, especially the young male population, would move into the town of Bathurst when the rains ceased and when crops were harvested. Their primary goal was to find jobs at the docks and the Public Works Department (department created by the colonial government for infrastructural development) as porters and temporary workers or as petty traders. Through this, they earned wages which they used to assist their families back in their villages, or establish their own households. No wonder one of the most common Mandinka village songs in Baddibu, the North Bank of the Gambia River, castigates those who left their fields (mostly groundnut farms) to go to Bathurst to pull and push donkey carts *(Laa wuloo ye meŋnu bayi, wolu taata mbaamu ňoroo la)*. The song could have been a reaction of Baddibu's agricultural community to the growing migration of their young male population to find paid labor in the colony.[2]

In addition, I show the relationship between Bathurst and the protectorate. In the realm of law, the history of Bathurst cannot be disengaged from the history of the protectorate because Bathurst was not only the seat of government, but also the legal headquarters of colonial Gambia. For instance, major crimes such as murder committed in the protectorate or crimes

[2] In many colonial cities of West Africa, especially Bathurst, young people (usually immigrants made money by using carts to ferry goods around the city. In local parlance, this became known in some ways *as bara ñini* (looking for work = Malinke). Nowadays, most people use a wheel barrow instead of a cart for the same purpose.

considered "repugnant" by the British were usually tried in Bathurst. Also, Bathurst was a place where appeals were heard.[3]

In the Gambia, the rural and urban cultural landscapes were being constantly transformed as a result of the movement of people between the two. Migrants and travelers from the protectorate and other parts of the West African sub-region who visited the colonial city included itinerant Muslim clerics and scholars. Some of these scholars were knowledgeable in Islamic law and could have influenced the legal discussions in Bathurst. The arrival of these local scholars coupled with the establishment of colonial legal institutions impacted and transformed the legal terrain in colonial Gambia.

I also examine the development of Islam and the introduction of British colonialism in the Gambia. For several centuries, the West African region witnessed numerous wars (*jihad*) between clerics and non-believers, precipitated by the rise of militant Islam. In the Senegambia region, these wars lasted for almost half a century (1850-1901), before they were crushed by the British and the French in the early twentieth century.[4] It is important to understand how and to what extent Bathurst became Muslim. I do this by relying on vast and rich primary sources and

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[3] For example, in 1900, two British Travelling Commissioners, six Gambian constables, and a large number of innocent people lost their lives in a land tragedy that involved the villages of Sankandi, Batteling, and the British colonial administration. This crisis has gained currency in colonial British historiography on The Gambia and popular memory in the country as the "Battle of Sankandi." The local leaders of this conflict were brought to trial at the Supreme Court in Bathurst, where they were eventually convicted and sentenced to death. For full story, see J. M. Gray, *A History of The Gambia* (London: Cass., 1966), 472.

[4] For the rise of militant Islam in the West African region, see David Robinson, *The Holy War of Umar Tal: The Western Sudan in the Mid-Nineteenth Century* (Oxford: Clarendon Press, 1985); David Robinson, *Paths of Accommodation: Muslim Societies and French Colonial Authorities in Senegal and Mauretania, 1880 – 1920* (Athens: Ohio University Press, 2000); Spencer J. Trimingham, A *History of Islam in Wes Africa* (London: Oxford University Press, 1962).

on publications that have grown steadily since the 1960s following John M. Gray's publication of *History of the Gambia*.[5]

The Gambia: Geography and Historical Context

The Gambia is a small West African country surrounded by Senegal on all sides except the Atlantic and lies 13 degrees north of the equator. It is situated within the Sahelian zone and covers a total area of little less than 11, 000 sq. kilometers. Today the population of the country is about 1.5 million, with a birth rate of 3.35%. The climate varies from a dry period from November to May and a short rainy season from June to October. Temperatures range from 25 degrees Celsius in February to 35 degrees Celsius in June and may drop to as low as 15 degrees Celsius in December/January. Rainfall fluctuates in normal years between 1000 mm and 800 mm.

Historically, the habitation of Bathurst is connected to the settlement of the Gambia region that witnessed a series of migrations (including, Mandinka, Wolof, Fula, Serere) from AD 1000 onwards. One of these migration stories linked the region with the ancient Manding Empire of Mali. At its height, its leader, Sundiata Keita (c.1217-c.1260) sent one of his trusted generals, Tiramaghan Traore, westward. This westward movement of significant numbers of the Mandinka, or Manding peoples, resulted in a series of conquests and intermarriages and the predominance of Manding culture and political organizations in the conquered land. According to this version of the story, Tiramaghan moved westward during the years of the consolidation of the Mali Empire. In reward for Tiramaghan's suppression of the rebellion of the Jolof Empire in central Senegal, Sundiata gave him the lands of the west. Tiramaghan migrated to his new lands

[5] Gray, 1966.

with thousands of Mandinka, settling families in villages along the route. Descendants of Tiramaghan's Mandinka invaders are said to populate much of the region from the upper Gambia through the upper Casamance and on into the old Kaabu regions of Guinea-Bissau.[6]

However, the history of the Gambia from the middle of the fifteenth century up to 1900 was seriously impacted by the presence of Europeans and their desire to acquire colonies. Before the English finally took control of the area of what is now Gambia, European powers (Portuguese, Dutch, French, and the English) struggled to control the Senegambia and trading posts along the coast, ending with almost half a century of struggle between England and France for political and commercial control in the region.[7]

The first Europeans to arrive in the River Gambia were commissioned by Prince Henry the navigator of Portugal in 1455. They were Cada Mosto, a Venetian, and Di Mare, a Genoese. In 1580, some Portuguese who sailed to the Gambia reported, "a river of secret trade and riches."[8] The Portuguese maintained their presence in the River Gambia until the early 1700s.

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[6] See Donald R. Wright. "Beyond Migration and Conquest: Oral Traditions and Mandinka Ethnicity in Senegambia," *History in Africa*, 12 (1985): 335-348; B.K. Sidibe and Winifred Galloway eds., *the peoples of the Gambia* (S.1: Oral History Division, Banjul, 1975).

[7] For more on the rivalry between Europeans to control the trade in the Gambia, sees Philip D. Curtin, *Economic Change in Pre-colonial Africa: Senegambia in the Era of the Slave Trade* (Wisconsin: The University of Wisconsin Press, 1975), 102. Curtin describes the activities of the Europeans as a play, "The style of warfare among Europeans of Senegambia posts involved a dominant defender and an aggressive challenger at each stage. In the first half of the seventeenth century, the Portuguese defended against the Dutch, France and England watched, more or less inactive on the sidelines. Then as the Dutch became supreme in the 1600's and the 1700's, the English and French acted together to dislodge them, just as Holland or England were to act together against France from the 1600's to the 1710's."

[8] National Records Service (NRS), Colonial Reports, Gambia, 1960/1961, Quadrangle, Banjul, the Gambia.

During these periods, several other attempts were made by the French and British to control the Gambia but no gold was found.[9]

During the 1700s, the English and the French quarreled over the possession of what is now James Island, situated (20 miles) from the mouth of the River Gambia. The French ceded the right of the English to James Island and to settle in the Gambia in 1713 at the treaty of Utrecht.[10] One of the main activities of the Europeans during these periods was the trade in slaves to supply the labor demands of the New World. Merchants traded slaves, gold, hides and skins, beeswax and a host of European merchandise. In the 1830s, the British introduced groundnuts in the country. Groundnuts became an important trade item as well as a mean of paying taxes. The colonial government required taxes to be paid in cash and cash could only be earned by growing groundnuts.

However, after the abolition of the Atlantic slave trade by the British in 1807, British attention was turned to stopping the flow of the slave trade in and out of the River Gambia, a business that was still run by other Europeans and their African counterparts. It became necessary for the British to find an alternative location to James Island more suitable to enforcing anti-slavery legislation and to firmly secure British commercial interests along the river. Banjul Island, known to the Portuguese as St. Mary's Island, located at the mouth of the River Gambia

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[9] For more on the early Europeans in the Gambia, see Peter Mark, *"Portuguese" Style and Luso-African Identity: Pre-colonial Senegambia, Sixteenth-Nineteenth Centuries* (Bloomington: Indiana University Press, 2002); George E. Brooks, *Eurafricans in Western Africa: Commerce, Social Status, Gender, and Religious Observance from the Sixteenth to the Eighteenth century* (Athens: Ohio University Press; Oxford: James Currey, 2003).

[10] See Gray, 1966.

became a perfect site for the purpose of guarding the mouth of the river and the British settlement.[11]

Gambia Colony: Bathurst and Protectorate, 1816-1970

Bathurst is an island situated at the mouth of the Gambia River, a river that extends approximately 1,100 kms inland. It divides the country almost in two equal parts and winds serpent-like on its course along 400 km kilometer length of land to reach a width of 24 to 48 kilometers at the mouth of the river. Its source is the watershed of the Futa Jallon highlands in Guinea, Conakry. The River Gambia used to be the principle determinant of settlement patterns and agricultural activities in the Gambia, with large and populated villages tending to follow zones parallel to the river where arable land was easily accessible.[12] During the rainy seasons, floods would leave lands nearer to the river fertile for agriculture, except for those lands inundated by the rise of salt water and adjacent to mangrove swamps. Many colonial reports indicate how flooding and mosquitoes affected life in Bathurst.

The history of Bathurst, like most newly established towns during the colonial era, is also closely linked with the European presence along the west coast of Africa. Before the British settlement of Bathurst Island, other Europeans, namely Portuguese, Spanish, Dutch, English and French sailors had been frequenting the mouth of the Gambia River as early as the mid fifteenth

[11] See Donald R. Wright, *The World and a Very Small Place in Africa: A History of Globalization in Niumi, The Gambia* (New York: M.E. Sharpe, 2010); Martin A. Klein, *Islam and Imperialism in Senegal: Sine-Saloum*, 1847-1914 (Stanford, California: Stanford University Press, 1968). Gray, 1966.

[12] Charlotte A. Quinn, *Mandingo Kingdoms of the Senegambia: Traditionalism, Islam, and European Expansion* (Evanston: Northwestern University Press, 1972), 6.

century.[13] Their trading posts dotted the banks of the Gambia River and were found in villages and towns such as Albreda, Berefet, Bintang, Bwiam, Balangharr, Kaur, Fatatenda, Kosemarr. But possession of strategic places was also crucial to these Europeans, especially the British who, since 1661, competed fiercely with French and other Europeans for James Island. The control of the Island was important because whoever was in charge of the Island monopolized all of the trade in the river.[14]

In 1815, the British Governor General of the English operation along the Gambia, Sir Charles McCarthy, ordered Alexander Grant to sail down from the Senegalese island of Gorée with a detachment of 75 men from the Royal African Corps, to look into the possibility of establishing a military garrison in the Gambia. Grant was an officer in the British imperial army. In 1816 Captain Grant entered into a treaty with Tumani Bojang, the King of Kombo, for the cessation of the island for an annual fee of 103 iron bars.[15]

A settlement was quickly established on the island and Grant renamed it St. Mary's Island. He called the new town Bathurst, after the then Secretary of State for the British Colonies, Henry Bathurst. Grant proceeded to construct an army barracks on the island housing six cannons. The six gun batteries are now on the World Heritage List together with James Island

[13] Gray, 1966, 6 and 60.

[14] See Winifred Galloway, *James Island: a background with historical notes on Juffure, Albreda, San Domingo and Dog Island*, (The Oral History and Antiquities Division, Banjul, 1978).

[15] See Gray, 1966.

and the ceded miles. The streets of Bathurst were laid out in a modified grid pattern and named after the principal allied generals of the war with Napoleon.[16]

Bathurst became in practice the seat of government services with the construction of official buildings, including parts of the quadrangle (government houses), hospital, and barracks. However, from 1821 to 1843, the administration of the tiny colony was transferred to Sierra Leone, but it became a colony in 1843, with its own governor, legislative council, and judicial system, and remained so until 1866, when the administration of the colony was again transferred to Sierra Leone. In 1888 the administration was brought back to Bathurst and in 1889 it was finally declared capital of the Crown Colony and Protectorate of the Gambia.[17]

The settlement soon began to attract settlers from the West African sub-region region including British colonial officials and immigrants from the protectorate. In their most recent book, Arnold Hughes and David Perfect show that the population of the colonial city increased steadily in the 1800s to an extent that by 1819, three years after the settlement was established, the population reached about 704 inhabitants. It increased steadily in the next twenty years to about 2, 825 in 1833 and 3, 514 in 1839. Moderate growth continued well into the 1850s – increases that were aided by the frequent arrival of shiploads of "Liberated Africans" or enslaved Africans captured at sea due to actions by the British Anti-Slavery Movement. The population of Bathurst only grew from 4,262 in 1851 to 4, 591 in 1872, but then rapidly increased to 6,138 in 1881, only to 6, 239 in 1891 and then to 8,807 in 1901. The biggest population jump came from

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[16] See Harry A. Gailey, *Historical Dictionary of The Gambia*, 2nd ed. (Metuchen, N.J., and London, The Scarecrow Press, Inc. 1987), 36-38; Arnold Hughes and Harry A. Gailey, *Historical Dictionary of The Gambia*, 3rd ed. (Lanham: The Scarecrow Press, Inc. 1999), 37-38.

[17] Harry A. Gailey, *A History of The Gambia*, (London: Routledge & Kegan Paul, 1964). See also Gray, 1966.

1931 to 1944 when it increased from 14, 370 to 21,152. In 1951, the population of the colony declined slightly to 19, 602 but increased again to 27, 809 in 1963 and to 39, 179 in 1973.[18] It is important to show the nature and diversity of the population increase in Bathurst because questions of ethnic origin remained essential in the religious and political differentiation between the groups who settled in the city. In fact, the disagreements between these contending groups impacted the establishment of the Muslim court.

Though the ethnic population of Bathurst was comprised of groups such as the Mandinka, Jola, Fula, Serere, Aku, and included other Africans and Europeans, it principally remained Wolof. In 1881, the Wolof population in Bathurst numbered only 829 rising to 3,666 in 1901. In 1911, it increased slightly to 3,705 but declined to 3,069 in 1921. Then it increased significantly to 10,130 in 1944, declining slightly to 9,544 in 1951. By 1963, the Wolof population stood at 11,311. The majority of the Wolof who were among the first settlers in Bathurst came from the northern territories of the Gambia River and from present day Senegal and may have migrated to Bathurst in the 1820s from Gorée and St. Louis in the French colony of Senegal. They and other Africans including, "Liberated Africans," were sent there by their European employers and Mulatto slave owners to work as artisans on the construction of the town, or as domestic servants, and tended originally to live in an area of north Bathurst, known as Jollof Town until the 1960s.[19]

Historically, the origins of the Wolof remains obscure, but by the fifteenth century the Wolof were firmly established in the Gambia Valley from Senegal, where they continue to be the

[18] For a detailed description of population movements see, Arnold Hughes and David Perfect, *A Political History of The Gambia,* 1816-1994 (Rochester, NY: University of Rochester Press, 2006), 8-9.

[19] Hughes and Perfect, 2006, 16; Gray, 1966, 315.

most numerous ethnic group. They established a kingdom in Saloum, which was the only known Mandinka (sic) kingdom below the Barrakunda Falls by 1800. Today the Wolof comprise the third largest ethnic group (about 16 percent) in the Gambia.[20]

The Wolof, like their Mandinka neighbors, live by a caste system of social hierarchy – nobility, freemen, caste groups, and slaves. The nobility are comprised of freedmen known as *Jambur*, and occupy the highest and most privileged position. Between the freemen and the slaves are the caste groups (*tegga* – Gold, silver, and black smiths), the leather workers (*udde*), and the musicians and praise singers (*gewel*). At the lower end are the descendants of former enslaved persons, who continued to be regarded as slaves (*jam*).[21]

Another major group is the Mandinka. According to Harry Gailey, the origins of the Mandinka are believed to be associated with the Bantus. The Mandinka first settled on the northern slopes of the Futa Jallon Plateau, the saddle between the valleys of the Niger on the east and those of The Gambia and Senegal on the west. The actual country of the Manding is believed to be in the Niger Valley.[22] From here the great Manding Empire emerged which saw the westward movement of some Mandinka peoples to their present locations in the Gambia region. They were certainly fully established on both banks of the River Gambia when the Portuguese

[20] Hughes and Perfect, 2006, 16; Quinn, 1972, 23-25; Gray, 1966, 325-327.

[21] For a detailed description of Wolof social and political culture, see David Gamble ed. *Peoples of The Gambia: The Wolof* (Gambian Studies, No. 17, San Francisco, 1985); Abdoulaye-Bara Diop, *La Société Wolof, Tradition et Changement: Les Systèmes D'inégalité et De Domination* (Paris: Karthala, 1981) ; Martin Klein, "Servitude among the Wolof and Sereer of Senegambia" in Suzanne Miers and Igor Kopytoff ed. *Slavery in Africa*: *Historical and Anthropological Perspectives* (Madison: University of Wisconsin Press, 1977); Klein, 1968.

[22] Gailey, 1964, 12.

explorers first arrived in the fifteenth century.[23] The Portuguese reported to have found Mandinka kings on the river who claimed to be vassals of the king of "Melle." In 1620, Richard Jobson also reported that the Mandingo were the "lords and commanders" of all the Gambia.[24]

The Mandinka rule extended over the conquered territories greatly influencing the political and social life of the region. Traditionally, the Mandinka society is socially stratified into three broad classes – the nobles (*Sulalu or forolu*), consisting of kings and rulers, religious leaders, and a warrior class; the artisan class *(Ñamalolu*), consisting of gold, silver, and black smiths, and griots, and at the extreme end is the slave category (*Joŋolu*), consisting of the descendants of the enslaved.[25] Today, the Mandinka comprise of about 42 percent of the population, mostly living in rural areas and largely agriculturalist.

Bathurst had a very small Jola population. The Jola are widely believed to be the longest residing people in the Gambia (more than any other resident ethnic group) and are found predominantly along the south bank of the River Gambia in the Foni district of the West Coast Region. The Jola tend to live in fragmented villages or small hamlets consisting of a few huts and houses divided into family groups scattered over a few square miles and independent of each

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[23] Hughes and Perfect, 2006, 13.

[24] Jobson, Richard, *The Golden Trade or A Discovery of the River Gambia, and the Golden Trade of the Aethiopians*, (London: Dawsons of Pall Mall, 1623), 47.

[25] For more on the Mandinka social and political organization, see the works of George E. Brooks, *Landlords and Strangers: Ecology, Society, and Trade in Western Africa, 1000-1630* (Boulder, Westview Press, 1993); Quinn, 1972; Lamin O. Sanneh, *The Jakhanke Muslim Clerics: A Religious and Historical Study of Islam in Senegambia* (Lanham, MD.: University Press of America, 1989); Wright, 2010; Donald R. Wright, **"**Darbo Jula: The Role of a Mandinka Jula Clan in the Long-Distance Trade of the Gambia River and Its Hinterland," *African Economic History*, No. 3 (Spring, 1977), 33-45**;** Peter Weil, "Mandinka Mansaya: The Role of the Mandinka in the Political System of the Gambia," (Ph.D. Dissertation, University of Oregon, 1968).

other. The Jola are also one of the groups in Gambia not known to be hierarchical.[26] Today, they comprise about 10 percent of the population.[27]

The population of the colonial city also had a small number of Fula (Fulbe, Pulaar) speakers. Fula, who comprise about eighteen percent of the Gambian population (including various Fula sub-groups), are mainly pastoralists, follow a sedentary agricultural life, and tend to live in small communities. The Portuguese in Senegal reportedly came into contact with the Fula from south of the Gambia, which suggests that the Fula must have migrated to the Gambia region before the fifteenth century.[28]

The Fula have long been associated with Islam and Islamic revivalism in Western Africa. Trimingham links the rise of militant Islam in the 18th century with the Fulbe speaking peoples, particularly the Torodbe, the Tukolor clerical class who may have settled the northern part of Senegal.[29] Robinson also states that, during the 18th and 19th centuries most of the Islamic

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[26] For more on the Jola, see the works of Robert M. Baum, *Shrines of the Slave Trade: Diola Religion and Society in Pre-colonial Senegambia* (New York, Oxford: Oxford University Press, 1999); Paul Pélissier, "Les Diola: Etude sur l'habitat des riz cultures de Basse Casamance," Travaux du Départment de Géographie, (Université de Dakar, passim, 1958); Peter Mark, "Economic and Religious Change among the Diola of Boulouf (Casamance), 1890-1940: Trade, Cash Cropping and Islam in Southwestern Senegal," (PhD. Dissertation, Yale University, 1976); Olga Linares, *Power, Prayer, and Production: The Jola of Casamance, Senegal* (Cambridge: Cambridge University Press, 1992); Olga Linares, "From Tidal Swamp to Inland Valley: On the Social Organization of Wet Rice Cultivation among the Diola of Senegal," *Africa*, 51, (1981); Frances Anne Leary, "Islam, Politics and Colonialism: A Political History of Islam in the Casamance Region of Senegal (1850-1919)," (PhD. dissertation, Northwestern University, Evanston, Ill, 1970).

[27] Hughes and Perfect, 2006.

[28] Quin, 1972, 8. See also Charlotte Quinn, "A Nineteenth Century Fulbe State" *The Journal of African History,* 12, 3 (1971): 427- 440.

[29] J. Spencer Trimingham, *A History of Islam in Wes Africa. London*, (Oxford University Press,1962), 160 – 161.

revolutions or revolts that swept across West Africa known as Jihads were led by Fulbes.[30] According to Hughes and Perfect, in the Gambia region some Fula sub groups were Islamized by the 1860s, but others remained animist well into the twentieth century. By and large, the presence of the Fula was felt in the 1870s and 1880s, when a famous Fula leader, Musa Molloh, established a Fula kingdom north of the river centered on Fuladu. As a result, by the 1960s, the majority of the Fula in the Gambia lived in the upper river and central river region.[31]

Many of the African residents of the city settled in Bathurst in order to escape from domestic slavery by seeking protection from the British. The arrival in the city of these former slaves re-ignited old forms of social relationships described above because domestic slavery persisted in the region until the early 1900s.[32] Some of these forms of social relationships would

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[30] See David Robinson, *Paths of Accommodation: Muslim Societies and French Colonial Authorities in Senegal and Mauretania, 1880 – 1920* (Athens: Ohio University Press. 2000). See also David Robinson, *The Holy War of Umar Tal: The Western Sudan in the Mid-Nineteenth Century* (Oxford studies in African Affairs. Oxford: Clarendon Press, 1985). Also see Andrew F. Clark, "The Fulbe of Bundu (Senegambia): From Theocracy to Secularization," *The International Journal of African Historical Studies*, 29, 1 (1996): 1- 23.

[31] Hughes and Perfect, 2006, 15 – 16.

[32] In the early 1900, slavery issues filtered through the Muslim Court in Bathurst, where wives and their children escaped to avoid being sold into slavery. See also Gray, 1966, 319 on slaves who sought refuge in Bathurst. In fact, it can be noted that though the European powers in West Africa passed laws against slave dealing, the crucial dilemma of colonial rule was how to manage the transition from a slave to a non-slave economy. As Roberts and Suzanne Miers note, the end of slavery in West Africa often pitted slaves against owners as well as the colonial state in a struggle to control labor. They further note that colonial rule created a growing demand for labor for porterage, for building infrastructure, and for producing food for the burgeoning administrative centers. Hence, freed slaves had three broad options: They could leave their former owners and move away; they could remain near them but sever ties to the extent that this was possible and desirable; or they could remain in their owners' households or villages but on different terms. See Richard Roberts and Suzanne Miers, *The End of Slavery in Africa* (Madison: University of Wisconsin Press, 1988); Paul E. Lovejoy, Jan S. Hogendorn**.** *Slow Death for Slavery: the course of abolition in Northern Nigeria, 1897-1936* (Cambridge; New York: Cambridge University Press, 1993).

filter into matrimonial relationships, further complicating household issues. The social differentiations would have impacted the relationships between men and women, such as between freed men and their wives of slave origins. Towards the end of the slave trade, some former masters manumitted their former concubines and married them. Many freed men also married former slave women. Many of these marriages could have been marked by domestic abuse with wives suffering physical and verbal abuse.[33] Elizabeth Schmidt maintains that historians need to strive to understand household dynamics because gender relations within the household by extension help shape the broader society. She notes that "unless we understand the interrelations between women and men, we cannot fully understand the structure of a given society."[34] For example, we need to understand how and in what manner the household is constructed. We need to know who could marry who in such a society and the conditions necessary to allow a marriage. It is therefore imperative to understand the social structure of the Gambian society and how these positions affected or aided women in their marriage households.

The settlement pattern in colonial Bathurst reflected the diversity depicted above. In other words, an interesting perspective of the ethnic composition of this new city lies in its settlement pattern – the way people belonging to the same ethnic group were put together forming their own towns. As more settlers arrived, the British allocated designated areas where ethnic groups could live. As noted earlier, geographically, the land mass of Bathurst was small and waterlogged, allowing little space for agriculture or crop cultivation. Despite the land constraint, the British officials allowed separate towns to spring up. For instance, wealthy settlers apportioned a

[33] In fact, a closer observation to the names of complainants in the court records revealed that most of the early cases were brought by men and women with last names that could denote belonging to a caste group, such as Jobe, Cham, Mbowe, Secka.
[34] Schmidt, 1992, 1.

separate space for trading and residence known as Portuguese Town. There was Melville Town, allocated mainly to the artisans, servants, and dependents of the early merchants, which became Jolof Town because of the predominance of Wolof in the area. Mocam Town, which later became Half-Die (because of a cholera epidemic that killed almost half of the inhabitants of this area), was for poorer Africans. There was also Soldier Town, named after the service men who settled there.[35] With the onset of colonialism in Africa, colonial officials brought with them not only ideas (which were often contradictory) about how Africans could be ruled, but even practices of how African spaces were to be planned. Writing about colonial settlement patterns, Bill Freund notes that "architectural adaptations on the one hand influenced the increasingly important and emblematic way of life of an emerging African elite and, on the hand, would be an effective weapon for intensified racial segregation and separation from Africa as a dominant European presence established itself."[36] Garth Andrew Myers also notes that "the construction of order in British colonial cities in Africa used architecture, landscape, and design features in political ways; shaped space in domestic and neighborhood environments; and gendered environments, to further the 'cultivation of public opinion on the spot,' to make the populace accept British rule and good will as commonsense reality."[37] One of the contradictory natures of spatial separation was that though Africans were placed in special locations, they interacted with Europeans on a daily basis as house workers, laborers, and clerks. These examples also show

[35] For a description of the vegetation of early Bathurst, See Gray, 1966.

[36] Bill Freund, *The African City: A History* (Cambridge University Press, 2007), 56.

[37] Garth Andrew Myers, *Verandahs of Power: Colonialism and Space in Urban Africa*, (Syracuse, N.Y.: Syracuse University Press, 2003), 7-8.

how differences in physical spaces characterized colonial policies and attitudes by keeping African communities at a distance, but at the time keeping a watchful eye on them.

The population increment of Bathurst should also be seen against the backdrop of the religious wars, or the wars between the Muslims and non-Muslims that disrupted economic activities, resulted in pillaged villages and hamlets, and caused social and political upheavals in the region. As a result of these wars, hundreds, if not thousands migrated to Bathurst to seek refuge. For example, in 1887, when Sait Matti (1850-1897), one of the leaders of these Muslim revolutions sought sanctuary in Bathurst from the British, he went there with his family and supporters.[38]

Islam, Muslim Revolutions, and the Colony of Bathurst

As a consequence of the Muslim revolutions (1850 – 1901) in the Senegambia region, peoples of different ethnic backgrounds escaped to Bathurst for protection. Generally, in the Senegambia region, the holy wars only escalated during the second half of the nineteenth century. This forceful dissemination of Islam, known as *jihad*, came to be known as the Soninke-Marabout Wars. Donald Wright, who has done extensive work in Niumi, the location of some of the most severe fights between the Muslims and unbelievers in the Gambia, recognises that "the most important period for the religious spread in the state had been in the middle of the nineteenth century, when the wave of Islamic reform, abetted by the social and economic change that accompanied peanut production, swept through, slowed only by the British interference."[39]

[38] Gray, 1966, 463.

[39] Wright, 2010, 197; See also Quinn, 1972. Quinn's work is undoubtedly one of the most comprehensive of the Soninke-Muslim wars in The Gambia.

The wars were fought mainly between the Soninkes, who followed traditional religious practices, and clerics, who were Muslim scholars and reformists. The clerics waged *jihad* to convert non-Muslims to the Islamic religion and forced them to accept the oneness of God and to believe in the prophet Muhammad as the Messenger of God. This period also saw attempts to establish in the region *Dar al-Islam* (abode of Islam) by Muslim fighters against non-Muslims.[40]

These wars were waged by Muslim leaders or *jihadists.* One of the key leaders of this aggression was Maba Diahou Ba (1809-1867), who had waged a series of wars in Baddibu and Niumi (Northern districts of the Gambia River). Al-Hajj Umar Tall, the main catalyst for the spread of Islam in West Africa, was said to have met Maba, and Umar gave him the responsibility to enforce Islam, a duty that only kindled Maba's desire to wage war on his unbelieving overlords.[41]

Wars between the clerics and non-believers continued on the south bank of the river with clerical leaders such as Foday Kombo Sillah (1830-1894) and Foday Kaba Dumbuya (1818-1901). Of the two, Foday Kaba, who came to dominate much of the south bank, had the longest reign of all the Muslim leaders, and his death in 1901 saw the complete stop of all religious conflict in the Gambia. While Kaba was trying to establish his rule over the Gambia and parts of

[40] For the spread of militant Islam in the Senegambia, see Gailey, 1964; Quinn, 1972,114; Gray, 1966, 389.

[41] See Gray, 1966. Maba was killed in 1867 during a raid in Sine Saloum. His death did not end the fighting between the Muslims and Non-Muslims. Gray documents the rise of Muslims against their non-Muslim overlords up and down the River Gambia after the death of Maba.

Senegal, another Muslim leader, Musa Molo, living in upper south bank states, was also solidifying his rule.[42]

In 1901, the defeat of Foday Kaba and his supporters on the south bank of the river signalled the end of militant reforms in the Gambia and an end to confrontations between the Muslims and non-Muslims. This defeat gave the British a pretext to declare the whole of the Gambia a British colony. The end of warfare meant that many Muslim clerics could travel from village to village and also to Bathurst to do their work.

As the population of the tiny city increased, competition for space and the few jobs created by European officials and businesses also increased. So also did the socio-cultural landscape of the city change. Increasingly many of the city's African residents became Muslims, and Islam became a major social marker of the city's identity. Since the arrival of the religion in the eleventh century, Gambians, like many other Africans, accepted Islam. By the early twentieth century, Islam became the dominant religion in the Gambia. Islamic institutions were functioning in many villages and towns, which flourished under the guardianship and teaching of Islamic scholars. One of the clerical groups influential in the spread of Islam are the Jahanke. Lamin Sanneh explains that the Jahanke are a specialized caste of Muslim clerics and educators who were mostly Manding speaking and had, over a period of several centuries, identified with a vigorous tradition of Islamic scholarship, education and clerical activity.[43] Islam diffused steadily through

[42] Gray, 1966, 448; See also Gordon Innes, ed. and tr., *Kaabu and Fuladu: Historical Narratives of the Gambian Mandinka* (London: School of Oriental and African Studies, University of London, 1976); See also Quinn, 1971.

[43] See Lamin Sanneh. 1989; Lamin Sanneh, "The Origins of Clericalism in West African Islam," *The Journal of African History*, 17, 1 (1976): 49 – 72; Thomas C. Hunter, "The Jabi Tarikhs: Their Significance in West African Islam," *The International Journal of African Historical*

education, which mainly included studying of the Quran, the teaching of Arabic language, and the ways and manners of Muslim life. Today, about 95 percent of the population of the Gambia consider themselves Muslims.

Whatever was the circumstance in the Islamization of West Africa, it is clear that by 1900, Islam became the dominant religion in the Gambia where clerics established their own villages to teach the Quran and further spread the word of God. This was the case in Bathurst, as it existed elsewhere in the colony, especially after the British conquest of the region in the early twentieth century.

British Rule in Bathurst, 1816-1965

By 1816, colonial administrators had to grapple with how to govern colonies like Bathurst and other African possessions "on the cheap." Clearly the colonial power had to maintain law and order on the ground, but politicians insisted that colonies be self-reliant. That is, metropolitan taxpayers would not be called on to maintain the empire. For this, British administrators decided to rule as much as possible indirectly. That is, they would allow "traditional African leaders to maintain their positions when and where possible, applying African law to local matters, but carrying out British policy when called on to do so. Needless to say, the system transformed the nature of "tradition," as African leaders were called on to do the bidding of a foreign power. Further, in the realm of law, "tradition was transformed as a new class of African judges was created to apply what was, supposedly, age-old "customary law." Hence, British administrators sat down with Africans who they assumed were knowledgeable,

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Studies, 9, 3 (1976): 435-457. See also Rebecca Turner, "Gambian Religious leaders teach about Islam and Family Planning," *International Family planning Perspectives,* 18, 4 (1992):150-151.

codified "customary law," and then called on judges they appointed to apply it. In Muslim areas, that law was *sharia* and was applied in Qadi courts that to this day oversee civil disputes.

What is obvious is that, as was the case in many parts of British colonial Africa, in the Gambia, the British ruled indirectly, co-opting local rulers whenever or wherever it suited them. British colonial rule was not much different from one conquered region to another because the same colonial officers moved around the continent. The indirect rule system presupposed an unequal relationship, one in which the British would allow "traditional" African leaders to maintain their positions, but required them to carry out British policy when called on to do so. Another factor that complicates the union of European, Islamic, and customary laws was the setting up of "native" courts. In these courts, a dual system of law operated – one consisting of *Sharia*, where chiefs continued to be assisted by Muslim judges and the other, concerned English law. In places like northern Nigeria, the colonial authorities added another complication by defining customary law as including Islamic law, the glaring differences between the two systems of law notwithstanding.[44]

In many parts of Africa, as it was in Bathurst, European rule gave birth to a court system that relied on sharia/Islamic law. In "Islamic Law in Africa," Allan Christelow provides an analysis of the development of Islamic law in colonial Africa. He explains how *sharia* and the courts could be used by historians to study the social history of colonial Africa. He points out that "the *sharia* encompasses not only matters included in secular concepts of law, such as taxation, homicide, or inheritance, but also social and ritual component. What foods may one eat? What clothes may one wear? How and when should one pray?" Christelow further points

[44] See A. A. Oba, *Islamic Law as Customary Law: The Changing Perspective in Nigeria* "Islamic Law as Customary Law: The Changing Perspective in Nigeria," *The International and Comparative Law Quarterly*, 51, 4 (Oct., 2002):817-850.

out that "the Islamic law offers a variety of traditions (the Hanafi, Maliki, Shafi'i and Hanbali), and they serve as the basis for distinct ritual-legal communities within the wider community of Islam. Each tradition has developed a corpus of texts dealing with both general methods of legal reasoning and specific legal questions."[45]

Christelow shows that Islamic legal systems differ from African ones, but that both systems can be blended. He writes:

> Islamic law, in principle, is administered by literate specialists and places relatively greater emphasis on the rights and obligations of individuals, as opposed to kinship groups, in marriage, property relations, and obligations related to blood payments. It introduces a new concept of status and associated rights based on religion rather than membership in a territorial or kinship community especially, in the field of real property rights, where Islamic legists in practice accommodates a wide array of different customary practices.[46]

The dominance of the Maliki School of Islamic jurisprudence in Islamic West Africa was due to the greater emphasis it placed on kinship ties than to social status. The spread of Islamic legal traditions in West Africa gained widespread acceptance as the legal tradition began to question the legitimacy of rulers and served to establish a region-wide status system, defining the qualities that separated Muslims from non-Muslims, a crucial matter since non-Muslims could be enslaved or be made to pay heavy taxes.[47]

For colonial rule to be functional with very few European administrators, African ideas of law and "custom" had to be incorporated into the new European introduced legal systems.

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[45] Allan Christelow, "Islamic Law in Africa," in Levtzion, Nehemia and Randall L. Pouwels. *The History of Islam in Africa (*Athens: Ohio University Press, 2000), 373.
[46] Christelow, 2000, 374.
[47] Ibid., 379.

European administrators struggled with the question of how "customary" law could best be used in African courts. This, according to Brett Shaddle, was the case in Kenya where from at least in 1920, but especially in the 1940s and 1950s, administrators were concerned with the codification of customary law and vigorously fought against it. British officials believed that reducing African custom to written law and placing it in a code would crystallize it, altering its fundamentally fluid or revolutionary nature.[48] Despite this ambivalence in colonial policy, for Roberts and Mann, the invention and eventual codification of custom solidified fluid cultural and legal ideas and relationships into reproducible rules. These rules were not only reproducible, but unalterable.[49]

Since many African territories fell to European conquest and territorial expansion in the late nineteenth and early twentieth century, Africans were forced to alter and adapt to new forms of authority and legal systems. Richard Roberts' research in the French Soudan during a period of increasing territorial conquest, and on the establishment of colonial institutions that examines the introduction of colonial legal instruments in many parts of Africa illustrates many of these changes.[50] Robert's work provides a way to understand not only the mechanisms of colonialism, but also how colonial authorities constructed legal frameworks to alter African "customary" practices to suit colonial ambition.

In French colonial West Africa, the conditions under which Islam spread was also commented on by scholars such as David Robinson and Jean-Louis Triaud. They have in fact

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[48] Brett L. Shadle, "Changing Traditions to Meet Current Altering Conditions': Customary Law, African Courts and the Rejection of Codification in Kenya, 1930-60," *The Journal of African History*, 40, 3 (1999), 412.

[49] Richard Roberts and Kristin Mann, *Law in Colonial Africa* (London: Heinemann, 1991), 4.

[50] Richards Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912 (*Portsmouth, NH: Heinemann, 2005), 30.

gone further to argue that the French colonial administration in West Africa had designed an Islamic policy, which Robinson dubs a "path of accommodation."[51] In accommodating Islam, the French administration spearheaded the establishment of an alternative Muslim educational system. In return for the support of Sufi leaders, the French organized earlier and more aggressively to create a modern school system that would combine Islamic and Western education.[52] Michael Crowder also notes that the French built mosques, sent Muslim leaders on pilgrimages, and gave rewards to Marabouts in order to secure the loyalty of Muslim subjects.[53]

In the Gambia, though it is apparent that the British system of rule was ambivalent and at times uneven, the British made strenuous efforts to pacify Muslim leaders and control the local populations. In doing so, some British officials endeavored to work with Muslim elders in Bathurst and these leaders in return would support the colonial system. The readiness of both the colonial authorities and the Muslim elders to work together to defend their mutual interest extended beyond European benevolence to Africans. The relationship was more of negotiations in which Africans knew how to bargain, but also made strides to deliver their part.

A case in point that demonstrates the working relations between the British and some Bathurst Muslim elders involved Sheikh Omar Faye. In February, 1940, Faye was asked by Colonial Governor Southern to embark on a tour of the protectorate to explain to farmers and chiefs "that His Excellency the Governor has helped them to get the Home Government in

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[51] David Robinson, *Paths of Accommodation: Muslim Societies and French Colonial Authorities in Senegal and Mauritania*, 1880-1920 (Athens: Ohio University Press, 2000).

[52] See Nehemia, Levtzion & Randall L. Pouwels, *The History of Islam in Africa* (Athens: Ohio University Press, 2000).

[53] See Michael Crowder, *West Africa Under Colonial Rule* (Evanston: Northwestern University Press, 1968).

London to spend on their behalf £150 to enable farmers to receive an increment in the price of groundnut bushel from 1 ½ shillings."[54] Faye's role in touring the country was to settle benevolent gestures offered by the British towards the Muhammedan farming communities. Apparently, the Governor had complained that he had "toured many trading towns and has found that some people have not clearly understood this assistance given them."[55] In a way, this case illustrates how the colonial authorities depended on the influence of Muslim elders to help them win the hearts and minds of the largely Muslim population.

To show his personal support for colonial ambition and the support of the Muslim communities, Faye in his report to the colonial Secretary, after meetings with the farmers, reported that "following my explanations, the majority of the people have very much appreciated this kind act of the imperial government through the instrumentality of His Excellency the Governor."[56] Another instance that shows elements of symbiotic relationship between colonial authorities and Bathurst Muslim elders was the Saga of the Income Tax Bill, 1940. The Muslim community largely opposed the enactment of the bill because they found it exploitative and un-necessary. For example, it was alleged that the venerable Imam of Bathurst was called upon by Governor Southern, "to pledge his support and that of the Muslim Community to the Income Tax Bill, to make it acceptable to the Muslim Community." Furthermore, the mutual relation reportedly extended to the Muslim Community, generating support in the form of a petition to

[54] National Records Service, Colonial Secretary's Office (CSO), CSO3/87, Sheik Omar Faye.
[55] Ibid.
[56] NRS, CSO3/87, Sheik Omar Faye.

the imperial government in London "to shower more honors on the Governor and some of his associates to be promoted."[57]

The British presence in the Gambia also needs to be understood in terms of the legal and judicial systems they introduced. It is also important to have an idea of the legal systems that were in place before the arrival of the British, and changes brought about by the introduction of European laws. During colonial rule, there were three legal systems in place. As I examine in chapter two and three, Africans had "traditional" forms of adjudications in place which were a mixture of "customary" laws and *sharia* because of the presence of Islam in the region for several centuries. The administration and judicial matters rested with Islamic clerics, chiefs, and village heads. Also, local populations had "traditional" conflict resolution strategies such as joking relationships rooted in social and cultural relations built overtime.

In addition to these "customary" practices, from the 1820s in the colony, the British had established a judicial institution based on English law for European and African settlers in the colony. As European control expanded to the limits of the present borders of the Gambia, the British introduced "native" court systems – to deal with judicial matters involving local populations living in the protectorate. These "native" (provincial or district) courts had three judicial pillars; "customary" laws, *sharia*, and English law.

In the Gambia colony, it was not difficult for the majority of the Muslim population in Bathurst, who by early 1911 numbered 4,993 out of a total population of 7,700, to demand the institutionalization of Muslim affairs.[58] The figure of 4,993 excludes the Aku, Manjago, Ibo, and other Africans living in Bathurst at the time. For nearly a century, the Muslim population

[57] The Gambia Echo, June 3, 1940, 5.
[58] Hughes and Perfect, 2006, 8-9.

had their cases heard by the European courts. Seemingly, there was dissatisfaction among Muslims of being attended to by those who were not Muslims.

The "ulamas" of Bathurst's Muslim communities were the Imams, the "petit" marabouts and the qadi. The latter were often appointed by the colonial government in consultation with the Muslim community. In the case of qadiship, the post after its creation was 3rd Grade on government's pay scale and carried a salary of £100 .00 per annum. The sum of money was not only substantial at the time but also had prestige and honor.[59] Another issue that also factored in the competition among Muslims was the person's place of origin. Over time, the first Wolof settlers came to view others as not indigenous, and therefore not entitled to such positions as qadiship. Hence, positions like qadiship and other leadership positions remained entangled in the contestation between Bathurst Muslim elders for several years. Like most of Bathurst's African residents, these qadis mostly came from the hinterland, in the rural areas. Many of them came from the most popular clerical villages in the Gambia's North Bank Provinces including the villages of Daru, Medina Serigne Mass Kah, Fass Omar Saho. Many of the qadi came from prominent Muslim families with relatively strong local and regional ties. Like most young Muslim children, the qadi often studied the Quran in these villages before moving to places such as Futa, St. Louis, Mauritania or even North Africa for advanced training in fiqh or Islamic jurisprudence.

This group of Islamic clerics knew Arabic both in its written and spoken form in Islamic schools called *Dara* or *Karanta*. It has now become the medium of instruction in the growing alternative and formal Arabic/Islamic educational institutions known as *'Madrassa'*. Often the qadis were themselves teachers and had a sizeable following both in and outside of Bathurst.

[59] NRS, CSO3/144, Muhammedan Court.

They commanded respect for their knowledge and it was not difficult for colonial officials to distinguish them from the larger Muslim community.

Like the Imams and the members of the broader Muslim community both inside and outside of Bathurst, the qadis were often involved in polygamous marriages. Many of them had multiple wives or grew up in large extended families where polygamy was the norm. As scholars, they also read and traveled. This implies that their worldviews were not only shaped by Islam or what they read but also their African backgrounds, cultures and worldviews. That means while their interpretation of *sharia* was often based on Islamic legal precepts, their African values, norms and beliefs may have played some role in shaping their decisions. It was possible that these qadis having lived in the city for a period of time could have been influenced by the colonial context.

It should also be noted that like in many other colonial towns, women formed a significant number of migrants to the colonial city of Bathurst. However, as some writers suggest, the typical African colonial city contained far more men than women. These scholars note that towns provided women with the opportunity to make money outside the confines of kinship and marriage. Some of these women played prominent roles in strengthening colonial rule and shaping the colonial city, not only as wives and mothers, but as business women, vendors, and food and fruit sellers, housekeepers for the European officials and settlers and as prostitutes.[60]

[60] Emmanuel Akyeampong, "'Wo pe tam won pe ba' ('You like cloth but you don't want children'): Urbanization, Individualism, and Gender Relations in Colonial Ghana, 1900-1939," in *Africa's urban past,* ed. Anderson David M., and Richard Rathbone (Portsmouth, N.H.: Heinemann, 2000), 222-234; Freund, 2007.

During the period under study, Muslim women residing in Bathurst attended local Arabic schools and became familiar with Islamic ideas and practices of the position of women within Islam. Also, these women, by gaining access to the European courts, became conscious of European liberty and the European justice system. In fact, before 1900, many Bathurst women, including market women, were already challenging male dominance and colonial laws that did not favor them. In one incident, a Bathurst woman selling at the market contested accusations against her involving a European man, a case she won in court.[61]

Conclusion

Despite African men and women gaining access to European courts, the Bathurst Muslim elders were not satisfied with European legal systems which the Muslims regarded as Christian. The Muslims elders therefore demanded that their cases be heard by a Muslim judge, a demand

[61] The Bathurst newspapers were filled with reports of women who were accused and had to face the English law. In 1871, the Bathurst Observer reported on the trial of Marie Susan, a Bathurst woman who went to court to challenge a wrongful imprisonment for contempt of court for 'insisting on testifying in court in Wolof during hearings;' another, Binita Suawareh, was tried in the same year for allegedly trading in slaves. She hired the Bathurst lawyer Chase Walcott who successfully defended her. In another landmark case, in late 1887, Horrjah Jobe, a young woman selling coos at the market exchanged a leather bag with a plateful of coos to a strange man. The lady took the bag to a butcher friend's shop for sale where a man called Ebrima saw the bag and claimed it was stolen from him with sundry items such as pagnes (wrap-arounds), bangles, manilas and cash worth £2 pounds. Ebrima reported the matter to the interpreter, Mr. Cashier, who arrested and detained the lady until other market women contributed the £2 that Cashier had demanded from her for her release. Horrjah was so embarrassed by her detention that she decided to empty her savings to hire Bathurst lawyer Renner Maxwell and a leading scribe John C. Gay to help her properly articulate her case before the court, and see that justice is done. The court case heard testimony from 8 people including many market women and white colonial officials. Cashier was found guilty of false imprisonment, extortion and abuse of office and dismissed from his job. Horrjah emerged a local hero in Bathurst for her successful stand against abuse of the rights ordinary people by lowly ranked colonial officials such as constables and interpreters.

that was met with establishment of the Muslim court, including the construction of the Bathurst Mosque, and the establishment of a Muhammedan school (secular). Both the Africans and the British entered into a series of contestations and negotiations to accommodate each other. It was the British law, though, that remained superimposed on the customary and Muslim laws.

By 1905, the British accepted demands from the Bathurst Muslim elders to establish a Muslim court based on *sharia*. For this, the British colonial administrators called on those Muslim clerics whom they assumed had vast knowledge of sharia and appointed them as judges. What needs to be understood are these layers of experiences (customary, sharia, and European) and how they stimulated change in the judicial landscapes of the Gambia colony and protectorate.

In the next chapter, I examine the genesis, growth, and development of the Muslim court and show how the court influences the nature of interactions between the Muslim population of Bathurst and the Gambia at large and with Europeans. I also demonstrate that the Muslim population of the colonial town of Bathurst was not a united community, despite belonging to a common religion – Islam. The Muslim community in Bathurst was one in which individuals were divided and where debates often arose over leadership issues such as qadiship, management of the Muhammedan School, Imamship of the Bathurst Mosque and political representation in the legislative council. It was also a community where intra–Muslim cleavages and gender conflicts tended to sever relationships in the community – between husbands and wives, children and their parents, and even among individuals.

As suggested by Carol Dickerman, if one hopes to comprehend the process by which these transformations occurred and to gain a broad picture of the political, economic, and social changes introduced during the colonial period, the courts themselves, their composition and

context, merit scrutiny, for they testify to the dynamic interactions between the colonial government and Africans and provide much insight into how colonial rule worked.[62] To describe the transformation of norms and customs into laws, one must analyze not only the body of rulings, but also the institutional context, the courts themselves.

[62] Carol Dickerman, "African Courts Under the Colonial Regime: Usumbura, Rwanda – Urundi, 1938 – 1962," *Canadian Journal of African Studies*, 26, 1 (1992): 55-69.

Chapter Two
Origins, Establishment, and Development of the Bathurst Muslim Court, 1905 - 1970

Muslim Court: An Overview

Prior to the introduction of the Muslim Court in 1905 in territories now known as the Gambia, the dispensation of justice rested mainly with the *Alkali*.[1] During colonialism and in the early phase of colonial rule, legal administration was of enough importance to colonial officials that there were several instances where they interfered with traditional rule and transformed African judicial culture in what Richard Roberts succinctly described as the changes in "landscapes of power."[2] For him the courts became part of the new judicial and legal changes

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[1] Alkaide is a corruption of the Arabic word for Muslim Judge. In the Gambia, it means the village head (Alkali, Alikalo, Alkaides).

[2] Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912* (Portsmouth, NH: Heinemann, 2005). Roberts says that landscapes of power thus contain physical institutions such as chieftaincy, heads of households, and courts, as well as social and cultural practices such as kinship, marriage, gender, slavery, labor, religion, leisure, wealth, and authority. In fact, many scholars have discussed that for colonial rule to be functional, African "traditions" and customs had to be incorporated in the European legal practices. For example, See Frederick Lugard. *The Political Memoranda: Revision of Instructions to Political Officers on Subjects Chiefly Political and Administrative* (Frank Cass and Co. Ltd, 1970); Terence Ranger, and Eric Hobsbawm eds., *The Invention of Tradition* (Cambridge and New York: Cambridge University Press, 1983); Kristin Mann and Richard Roberts, eds., *Law in Colonial Africa* (Portsmouth, NH: Heinemann, London: James Currey, 1991); Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985). A good example of European interference in African "traditional" rule was the case in northern Nigeria when at the time of conquest, some "traditional" rulers were coopted into the new British administrative system. See for example, Murray Last, "The Colonial Caliphate of Northern Nigeria" in Le *Temps des Marabouts: itineraries et Strategies Islamiques en Afrique Occidentale Francaise, v. 1880-1960,* ed. David Robinson and Jean Triaud (Paris: Karthala, 1997), 67-82; P. K. Tibenderana. *Sokoto Province Under British Rule, 1903-1939: A Study in Insttuitonal Adaptation and Culturalization of a Colonial Society in Northern Nigeria* (Zaria: Ahmadu Bello University Press, 1988); similarly, the French colonial officials had dealings with Africans. See David Robinson, France as Muslim Power in West Africa," *Africa Today*, 46, 3/4 (1999): 105–127; David Robinson,

that resulted from the encounter between French colonialism and dynamic local processes of change predating conquest in the French Soudan. The central question for Roberts is how colonial institutions, such as the new courts that came into existence in 1905, contributed to changes in the legal and administrative matters in Africa and how Africans negotiated these new terrains. Roberts argues that in using these new courts, "women and men not only acted in their interests, but also forced subsequent changes in the landscapes of power in the French Soudan."[3] A case in point happened at the village of Salikenye of the North Bank province, the Gambia, in the late nineteenth century.

In 1890, British Travelling Commissioner Ozanne, received a message from the *Alkali* of Salikenye village that a man had stolen a girl from his town at night and carried her off to Dasilammi village, in the Jokardu District.[4] Ozanne decided to go to Salikenye as an opportunity to see a full "traditional" court sitting. The man who had kidnapped the woman and taken her to Dasilammi had been married to the girl for nine years and had to pay 10 cents to the father. For three years, he kept on paying at intervals small quantities of Kola nuts, pagnes (wrap around), and coos as partial payment of the dowry.[5] Then the father of the woman got impatient at not

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"French 'Islamic' Policy and Practice in Late Nineteenth Century Senegal," *The Journal of African History,* 29, 3 (1988): 415-435.

[3] Roberts, 2005, 30.

[4] The British administration of The Gambia evolved around Bathurst as the colony, and the rest of the country as the protectorate. The governor sat in the colony and travelling commissioners served in the protectorate one for each bank of the river Gambia – south and the north bank. The role of the travelling commissioner was as an assessor to the "native" courts and the administration of the area under his jurisdiction.

[5] In most parts of the Gambia, especially Muslim areas, kola nuts sanctify marriages and also bless many social occasions. "Traditionally," before husbands take their wives, they will help the intended in-law with work on his farm and also sometimes with small presents. Also, material things such as cloth, household utensils, jewelry constitute marriage items or presents.

receiving the whole amount and took back his daughter. The husband went away to make money in order to get her back. After three years of waiting, the father gave his daughter to a man in Salikenye, and they had lived happily together for three years, during which time they had two children.

While the second husband was absent from Salikenye, the former husband seized the opportunity to steal back the woman. Ozanne told the *Alkali* and *Almami* to call all the parties up and settle the case.[6] The Alkali sat next to Ozanne on a chair; the *Almami* sat on the ground with a large Quran opened in front of him. The *Alkali*, the *Almami*, and several people addressed the meeting, all in the same way stating that they must settle the case "patiently and do justice."

> At first all went quietly, then the first husband began to speak, and was with difficulty suppressed. The father of the woman tried to speak but was interrupted by the same man joined by his friends. In vain the Alkali tried to keep order, the whole assembly arose, and every man talked as loud as he could. At last the Almami's people chanted a song of dirge, which was gradually taken up by those present, and as the people sat down, they continued singing as if nothing had happened. For a third time, the trial went on, but it did not continue long, before, they were all on their feet again, quarrelling and talking louder than ever.[7]

The *Almami* then got up, shook Ozanne by the hand and said he was very sorry, but he could not go on with the trial. Ozanne told the *Alkali* to dismiss the people, and that he would decide the matter himself. Ozanne handed the woman over to the relatives of the second husband, and told the first husband to return quietly to Dasilami. The man professed to be satisfied with Ozanne's decision and promised not to trouble again.[8]

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[6] The *Almami* is the religious leader of the community and usually presides over cases relating to marriage, divorce, and solemnizes births and marriages. The *Almami* also leads the community in prayers.

[7] National Records Service (NRS), Annual Reports (ARP), ARP 32/1, 1891, North Bank, Traveling Commissioner Reports.

[8] For a full story of this case, see NRS, ARP 32/1.

Though this episode took place outside of Bathurst, the story shows that prior to the introduction of the Muslim Court in 1905, local people contended with marital issues and had mechanisms in place to solve such issues.[9] It also reveals that Islam and Islamic jurisprudence were fundamental to the judicial culture as can be seen by the presence of the Quran and the *Almami*.[10] The case also gives some indication of marriage patterns as it includes the payment of dowry in cash and kind.

Why were the *Almami* and the *Alkali* both unable to solve this particular issue? Was it because of the presence of the Traveling Commissioner? In other words, does the presence of the Traveling Commissioner have anything to do with the inability of "traditional" rulers to solve this particular issue? Or did the local authorities by the time of this incident know that power was in the hands of the British? Or did the Travelling Commissioner become impatient and interfere in the process? The Travelling Commissioner decided to hear the case to see how the local population adjudicated their cases, but the outcome of the case displays the influence British colonial officials held in matters of administration among the colonized.

In investigating the genesis, growth, and development of the Muslim court, I show how the court influenced the nature of interactions between the Muslim population of Bathurst and

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[9] Based on several arguments made by scholars on colonial rule, one can make the case that system of administrations imposed by colonial rulers presupposed three issues; Europeans demeaned "traditional authorities, respected the values of "traditional" rule, and or did not have tangible ideas of how Africans should be ruled and therefore were forced to work with them. For instance, see Michael Crowder, *West Africa Under Colonial Rule* (Evanston: Northwestern University Press, 1968); Peter K. Tibenderama, "The Irony of Indirect Rule in Sokoto Emirate, Nigeria, 1903-1944," *African Studies Review,* 31, 1 (Apr., 1988): 67-92; Sara Berry, "Hegemony on a Shoestring: Indirect Rule and Access to Agricultural Land," *Africa: Journal of the International African Institute*, 62, 3 (1992): 327-355.

[10] The Holy Quran is central to the dispensation of Islamic justice that is the S*haria* (way or path), which are divine revelations. Its presence in a judicial matter signifies that all or one of the litigants is Muslim.

Europeans. I also argue that the Muslim population of the colonial town of Bathurst was not a united community, despite belonging to a common religion. The Muslim community in Bathurst was one in which individuals were divided and where debates often arose over leadership issues such as Qadiship, management of the Muhammedan school, Imamship of the Bathurst Mosque and political representation in the Legislative Council. It was also a community where intra–Muslim cleavages and gender conflicts tended to sever relationships in the community – between husbands and wives, children and their parents, and even among individuals.[11]

Recently, scholars have turned their attention to court records to try to understand relations between individuals and communities and transformations that have resulted from these interactions. Researchers have come to understand how court records can provide opportunities to gain insight into the activities of social organizations and institutions. They can also offer a unique dimension to the investigation of the relationships between different social groups. Court records can reveal struggles between men and women, elders and youths, and elites and less privileged people. Court transcripts are some of the few records in which historians can hear voices of the disadvantaged, such as slaves articulating discontent with their status; these transcripts reveal conflicts emerging from slave custody issues, manumission and freedom. Court

[11] Islamic culture tends to place an emphasis on community, strongly supporting marriage. Several verses of the Quran support the sense of individual and community (Islamic umma). Al Nisa, 4:36; 4:135; Al Hujurat, 49:10). For more on how common practices of Islam bonded the members/believers, especially the merchant class, together, see Claude Meillassoux ed., *The Development of Indigenous Trade and Markets in West Africa* (London: Oxford University Press, 1971). Mevyn Hiskett, *The Development of Islam in West Africa*, *1860 – 1960* (London: Longman, 1984). David E. Skinner, "Mande Settlement and the Development of Islamic Institutions in Sierra Leone," *International Journal of African Studies*, 11, 1 (1978): 32-61. Ivor Wilks, *Wa and the Wala: Islam and Polity in Northwestern Ghana* (New York: Cambridge University Press, 1989). Richards L. Warms, "Merchants, Muslims, and Wahhabiyya: The Elaboration of Islamic Identity in Sikasso, Mali," *Canadian Journal of African Studies,* 26, 3 (1992): 485 – 507.

records exist mainly in two forms; civil and criminal, and can inform us about social, cultural, legal, and institutional history.[12]

Similar to arguments made by Richard Roberts about the French Soudan, the creation of the Muslim courts in The Gambia provided opportunities not only to individuals seeking redress, whether male or female, but also to larger Islamic groups in navigating the contours of legal landscapes set up by the British.[13] I build on this view by showing that the establishment of the Muslim court by colonial officials marked a shift from customary laws (the way local populations arbitrate) to more formalized institutions (written and codified laws with bureaucratic structures). The institutionalization of the court set it apart from the "traditional" ones in that the new court provided some level of assurances, not only for redress, but also means and opportunities for appeal. In addition to being the venue for the redress of wrongs and conflict resolution, courts (Muslim or secular) are also characterized as sites of mediation and contention. I take this argument a step further, expanding the discussion to highlight the economic, political, and social changes that followed the establishment of the Muslim court and the role it played in colonial governance in the Gambia.

I also build on contextual studies of the Senegambia region, particularly those that deal with the interface between Islam and colonialism. Some of these include works by Harry Gaily, *A History of The Gambia*.[14] A substantial part of these works focuses on Muslims' responses to

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[12] See Richard Roberts, "Representation, Structure and Agency: Divorce in the French Soudan During the Early Twentieth Century," *Journal of African History,* 40 (1999): 389-410

[13] See Roberts, 1999.

[14] See Harry, Gailey, *A History of The Gambia* (London: Routledge and Kegan Paul, 1964); J. M. Gray, *The History of The Gambia* (London: Cass.,1966); Donald Wright, *The World and a Small Place in Africa: A History of Globalization, The Gambia (*New York: M. E. Sharpe, 2010);

colonialism, the wars between Muslims and non-Muslims, and the expansion of Islam in the region. In spite of the rich literature produced by these scholars, they do not address the role of the Muslim courts in the interface between Islam and colonialism.

My conclusions for this chapter were drawn mainly from colonial government records (ordinances, correspondences, minutes, and traveling commissioner's reports), located at the National Records Service and Magistrate court in Banjul. Being cognizant of the limitations of documentary sources, especially those created during the colonial period, I am able to sift relevant information from these records leading to the establishment of the court as well as important documents on the Euro-African relations. The records specify and reveal detailed information about the intentions and actions of the British colonial officials and Africans, as well as the frictions among the Bathurst Muslims in establishing what can be considered Muslim identity.

Despite opportunities provided by court records, they have some structural weaknesses and limitations, such as inconsistent record keeping, human error, and lack of clear procedural guidelines for court clerks. Some of the records are not easy to read, due to the lack of proper education of court clerks and interpreters. During the colonial period, a majority of the clerks only had a few years of functional schooling. This lack of clarity hides valuable details important for weaving together a conclusive case study.[15]

Philip Curtin, *Economic Change in Pre-colonial Africa: Senegambia in the Era of the Slave Trade* (Madison: University of Wisconsin Press, 1975)*;* Charlotte Quinn, *Mandingo Kingdoms of the Senegambia: Traditionalism, Islam, and European Expansion*. (Evanston: Northwestern University Press, 1972); Lamin Sanneh, *The Jakhanke Muslim Clerics: A Religious and Historical Study of Islam in Senegambia* (Lanham, MD: University press of America, 1989).

[15] For notes on documentary sources, see Thomas Spears, "Approaches to Documentary Sources" in *Sources and Methods of African History. Spoken, Written, Unearthed,* ed. Falola, Toyin and Christian Jennings *(*Rochester, NY: University of Rochester Press, 2003), 169-172.

Origins, Development, and the Establishment of the Muslim Court

At the beginning of colonial rule, there was a proliferation of Muslim and "native" courts in Africa. For example, in 1903, a court was established in Nigeria, in 1903 in the four French Communes (1857 in St. Louis, Senegal), and in 1903 in the French Soudan.[16] Scholars such as David Robinson reason that allowing the creations of institutions like the courts by the French fostered an atmosphere of dependence which encouraged Senegalese Muslims to accept the compatibility of foreign rule and Islamic culture.[17]

In colonizing the Gambia in the late 1800s, the British took it upon themselves to maintain what they considered to be law and order with minimal supervision by establishing institutions responsible for the maintenance of law and order.[18] In 1905, a group of Muslim elders demanded that their cases be heard by a Qadi (Muslim Judge) rather than the European

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John Edward, Philips, *Writing African History* (Rochester: University of Rochester Press, 2005). For the role of interpreters, see Saliou Mbaye, "Personnel Files and the Role of Qadis and Interpreters in the Colonial Administration of Saint-Louis, Senegal, 1857-1911," in *Intermediaries, Interpreters, and Clerks: African Employees in the Making of Colonial Africa*, ed. Benjamin N. Lawrence (Madison: The University of Wisconsin Press, 2006), 289-295.

[16] See for example, Lugard, 1970, 281; Paul E. Lovejoy and Jan S. Hogendorn, *Slow Death of Slavery: The Course of Abolition in Northern Nigeria, 1897-1936,* (Cambridge: Cambridge University Press, 1993); Roberts, 1999; Rebecca Shereikis, "From Law to Custom: the Shifting Legal Status of Muslim Originaires in Kayes and Medine, 1903-13." *Journal of African History, 42 (2001), 261-283.*

[17] David Robinson, "French 'Islamic' Policy and Practice in Late Nineteenth Century Senegal," *The Journal of African History,* 29, 3 (1988): 415-435.

[18] For similar attempts by the British elsewhere, see Lugard, 1970; Justin Willis, "Hukm: The Creolization of Authority in Condominium Sudan*," The Journal of African History*, 44, 1, (2005): 29-50; Carolyn Fluehr-Lobban and Hatim Babiker Hillawi, "Circulars of the Sharī'a Courts in the Sudan (Manshūrāt El-Mahākim El-Sharī'a fi Sūdān) 1902-1979," *Journal of African Law*, 27, 2 (Autumn, 1983):79-140.

court, which they saw as Christian.[19] Europeans gave in to the demands by Muslim elders in Bathurst to establish a Muslim court. This action was not without precedent in African colonies of European countries. Muslims in Freetown, Sierra Leone and Lagos, Nigeria petitioned the local colonial governments to have Islamic law govern their legal relationships. The Sierra Leone administration obliged with a Muslim marriage ordinance that recognized three areas of Islamic law–marriage, divorce, and intestate succession.[20]

In response to the demands of the Muslim elders in Bathurst, the British authorities appointed a Qadi and also included a Muslim in the Legislative Council as an unofficial member. The Muslim Court, headed by a Qadi appointed by the Governor, had the power to levy fines against convicts, but had no power of imposing other forms of punishments like imprisonment and flogging. The legislation provided that whenever in the opinion of a Governor the Qadi was not a man of uncontested ability, the court should be constituted by the Qadi and two assessors, selected by the judge of the supreme court, who had to be persons of the Muhammedan faith and Justices of the Peace: And whenever the offices of the Qadi were vacant, or the Qadi was unable by reason of absence from the colony or illness or incapacity to perform the duties of his office the court was to be constituted by two or more assessors and the senior assessor should give the

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[19] Prior to independence in 1965, law in the Gambia was comprised of the received law, native law and "custom." The received law was established by the law of England Application Ordinance (act after independence), which provided that the common law, the doctrines of equity and statutes of general application in force in England on 1st November 1880 should apply in the colony of the Gambia. The law administered by the Tribunals in "native" law and "custom" and Muslim law relating to civil status, marriage, succession, divorce, dowry, rights and authorities of partners and guardianship whenever the parties were Muslims. See Arnold Hughes ed., *The Gambia: Studies in Society and Politics* (Birmingham University African Studies Series 3, Centre of West African studies, 1991), 55.

[20] Kristin Mann and Richard Roberts eds., *Law in Colonial Africa* (James Currey: London, 1991), 14.

judgment of the court. All proceedings of the court were drawn up in Arabic and therefore a person learned in Arabic was appointed as clerk.[21] A few decades after the Muslim court was established in Bathurst, another one was established in Kombo under Section 61 – 67 of part VII of Kombo St. Mary Division Ordinance 1946.[22]

The Muslim court derived its powers from and functioned under legislations such as the Muhammedan Law Recognition Ordinance, 1905, the Muhammedan Court Rules 1917 Powers, and the Muhammedan Marriage and Divorce Ordinance, 1941. The court had jurisdiction in all causes and matters, contentious and not, between exclusively "natives," relating to civil status, marriage, succession, donations, testament and guard ship (guardianship). The court had no criminal jurisdiction.[23]

In matters of appeal, decisions of the court went to the Supreme Court. A Tafsir or person learned in Muslim law sat as assessor to the judge of the Supreme Court in all such appeals for advisory purposes only. No appeal was possible in matters under £5 except by leave of the court. The Qadi or the Muslim judge was considered a civil servant third grade with an annual salary of £100. Attached to the post was also an Arabic clerk at fourth grade who received a salary of £50 annually.[24] The majority of the cases brought before the Qadi were marital disputes, divorce suits, child custody disputes, and settlement of dowry.

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[21] NRS, Colonial Secretary's Office (CSO), CS02/942; 6th April, 1948. Report on the Working of the Muhammedan Court. Memo from E. R. Ward to Lord Hailey.

[22] NRS, CSO2/942. When the courts were set up in northern Nigeria, British administrators decided that the courts were to administer the native law and custom prevailing in the area of jurisdiction, and might award any type of punishment recognized thereby except mutilation, torture, or any other which was repugnant to natural justice and humanity.

[23] NRS, CS02/942.

[24] NRS, CSO2/942.

Though the court located in Bathurst principally served the residents of the city and its environs, throughout the protectorate where "native" courts operated, the colonial administrators had a sitting Muslim judge or a person learned in Islamic law. In part, the study of the Bathurst Muslim court serves as a window through which to view the broad parameters of not only intra-Muslim divisions, but processes by which *Sharia* and English law co-existed in the Gambia colony and protectorate.

To understand fully the role played by the Muslim court in shaping the history of Bathurst, it is important to grasp the textures, passions, and routines of everyday life in the tiny city. For instance, why were Europeans quick to accede to Muslim demands for a separate legal system and school? Here, it is essential to examine how and why the struggles and contestations between the Bathurst Muslim elders, Christian Missions, and the colonial establishments related to the political, social, and economic issues.

Muslim elders of Bathurst were concerned about politics and wanted to be represented in the Legislative Council, to sit side by side with their fellow Africans, though they were Christians and other non-Muslims, in the Legislative Council. African representation on the Legislative Council started in 1867, but until 1920 they were always Christians such as Samuel Forster and S. Hortin Jones.

Socially, the Muslims were concerned with having a Muslim-friendly education and legal system as many of them neither wanted to take their children to Christian missionary schools (Stanley Street School, Dobson Wesleyan School, Methodist Boys and Girls High School) nor to take their civil complaints to the European court system, which they considered Christian. The elders also demanded Mohammedan schools since they saw education as a vehicle that could allow them to compete with their Christian brothers and sisters in politics and job opportunities

offered by colonial rule. Above all, an educated Muslim class could also increase their chances to have a seat in the Legislative Council. Importantly, the Muslims realized that in order to gain influence, they had to be employable in the colonial civil service and therefore had to be educated.

How and to what extent the Muslim majority could be a part of the economic establishment of the colony was also a subject of concern for some Muslims. Most of the import and export trade from the mid-nineteenth century to the early twentieth century was in the hands of the European firms such as Barthez, Bathurst Trading Company, Compaigne Francaise Afrique Ocidentale, and Aku (a small ethnic minority descended from freed slaves) merchant families such as the Carrols, Jones, and Goddards. Another merchant group was the Bathurst Muslim Wolofs, who were dependent to a large extent on the European firms and Aku merchants to finance their trade, particularly in groundnuts. The colonial government was therefore keen to maintain peace because the wars between Muslims and non-Muslims were affecting much of the trade in the protectorate. In fact, in some reports, continuity of trade appeared to be the main concern of the British. In 1867, Governor Blackhall reported; "I am sorry to find in my arrival here two 'tribes' both of whom this government is at peace. They have commenced war again and British trade has been interfered with. I do not wish to interfere in their quarrels; I am in neutrality as long as both parties will respect the property of British merchants and not permit their trade to be interrupted."[25] In his reply to the Governor, Chief Arafang made it clear that "because we want to protect the White man's trade and goods, we have built a stockade near the Wharf of MacCarthy Island and we have lost twelve men killed by the marabouts on account of

[25] NRS, ARP30/1, 3rd March 1867, from Governor Blackhall to Arafang Jorbateh of MacCarthy Island.

the White people who are our friends. As this stockade is now built on the wharf, the White man's goods will be safe in our hands from attacks by Jamally marabouts."[26] In addition, a number of factors were also responsible for the British giving in to the Muslim demands. One of the reasons could be explained by British involvement in the wars between Muslims and non-Muslims in the Senegambia from 1850 -1901. This led to mistrust, anxiety, and apprehension among the Africans and the colonial establishment. Hence, the colonialists wanted to ensure that peace and stability was maintained in the predominantly Muslim colony. Consequently, these conflicts elicited a dramatic response to Muslim elders' demands in the establishment of the Muhammedan School in 1903, which offered both Quranic and Western education, and also the formation of the Muhammedan Court in 1905. Partly, the quick response to Muslim demands could also be explained by the goodwill of British governors such as Denton (1901 – 1911), who was seen to be particularly interested in Muslim affairs. For example, it was under Denton's watch that both the Muhammedan School and Court were established. It should be noted that by 1900, the British responded to similar demands of Islamic schools with secular education elsewhere in West Africa. In Freetown colony in Sierra Leone, a Madrassa system (Islamic school system) of Islamic education was launched with government support.[27]

Furthermore, the ways in which the British designed regulations such as appointments, appeals, and jurisdiction points to both British attempts at control and appropriation as these actions rested with the British. Africans had very little say in the way these legal instruments were drawn. Also, for the first time, ordinary citizens found themselves caught up in the clutches

[26] NRS, ARP30/1.

[27] Lamin Sanneh, *The Crown and the Turban: Muslims and West African Pluralism* (Boulder: Westview Press, 1997), 150-151. *Madrassas* are now public Arabic Schools run private and monitored by Government.

of British colonial administration by the introduction of ordinances. It became clear that not only did the locals have to abide by the laws of the British, but they could be charged, sentenced, and imprisoned under such laws.

These regulations point to what Muhammad Umar sees as "British Patronage of Islam." Umar discusses the ways in which British colonial authorities took ownership of Islam and assigned to Muslims leaders the task of controlling the Muslim population. He notes that as the British took ownership of Islam and assigned to it the important task of control of society, it was necessary for the British to protect that ownership, and to promote Islam to the extent necessary for the efficient control of the Muslim population.[28]

Though the court was established in 1905, its first sitting was in 1906 concerning a matrimonial case. From the time of its establishment, the court remained busy. For instance, during the first five years of existence, it dealt with 79 cases, and from 1922 to 1928 the court dealt with 294 cases.[29]

Year	1922	1923	1924	1925	1926	1927	1928
No. of Cases	52	45	26	47	49	36	39

From the time of its inception in 1905 to modern times, the Muslim court remained central to addressing not only matrimonial problems of the Muslim communities but other social problems such as slavery and other property rights issues. Despite its role, the court has often

[28] Muhammad S. Umar, *Islam and Colonialism: Intellectual Responses of Muslims of Northern Nigeria to British Colonial Rule* (Leiden-Boston: Brill, 2006), 27.

[29] NRS, CSO3/144, The Muhammedan Court. See also the Muhammedan Court Record Book, 1906 – 1913, Banjul Muslim Court.

come under criticism from some colonial officials. The Supreme Court judge in a report of 1929 said that "in practice the Qadi decides nothing except how to end or mend unhappy marriages. In order, he functions solely as a matrimonial referee. It seems curious that it should even have been deemed necessary to constitute a special court to deal with such matters."[30]

Despite such ambivalence, Muslim matrimonial issues eventually became the concern of British colonial officials. In 1937 a marriage license to be issued by Native Tribunals was proposed. According to the opinion of many colonial officials, the license was meant "to reduce the number of thoroughly unsatisfactory matrimonial cases which are so common in Native Tribunals, and marriages could not be recognized in a Native Tribunal, and no case would lie for a claim for refund of dower if not issued a marriage license."[31] However, the local traditional authorities (chiefs) opposed the marriage license on the grounds that "it is bringing government into a matter (marriage) where it has no concern and that marriage dower should be recorded according to custom."[32] This is an indication that the British were either not sure of what policies to implement or had no clear understanding of Muslim issues as well as Islamic laws. As I examine in Chapter three, this lack of a definitive understanding of Muslim law led to difficulties of how Muslim law should be interpreted.

Ordinances Related to Marriage and Family, 1862 - 1967

Matrimonial ordinances, like other ordinances introduced during the colonial period, were aimed at the task of accomplishing colonial rule by the British. British colonial officials

[30] NRS, CSO3/144.
[31] NRS, CS02/1638 – Marriage Licence issued by Native Tribunals – (chap 3).
[32] NRS, CSO3/144, 16/9/1938. Commissioner South Bagley to Colonial Secretary Bathurst.

were preoccupied with enacting legislation aimed at regulating affairs in the Gambia colony and protectorate and to strengthen their control. The ordinances could also be seen as measures to set boundaries at which African populations could navigate the legal terrain of the country. Examples of such ordinances include regulations on many aspects of life such, as the Kombo Militia Ordinance in 1862, which enabled the formation of a volunteer reserve force; the Protectorate Ordinance in 1894, which carved up the country into divisions and districts; the Protectorate Trade Licences Ordinance in 1895 passed to regulate trade; the Slave Trade Abolition Ordinance in 1894 (but repealed in 1906) to enforce the banning of the trade; and the Affirmation of the Abolition of Slavery Ordinance of 1930.[33] In many ways, the promulgation of these ordinances was meant to regulate control the local population and to promote trade and the cultivation of groundnuts. From the mid nineteenth century, groundnut cultivation became the mainstay of British economic activities in the region. The production of the crop required a large reservoir of labor which in the nineteenth century was mostly done by freed slaves.

As scholars demonstrated some of these laws were meant to control families in order to control their labor and colonialism and colonial rule negatively impacted Africans especially women. Elizabeth Schmidt suggests that European colonial officials and African leaders, especially chiefs, collaborated in using the new courts or European legal systems to control women's movement and thereby exploit their labor.[34] Emily Burrill, Richard Roberts, and Elizabeth Thornberry also note that:

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[33] For detailed description and meaning of some these ordinances, see Gray, 1966.

[34] See Elizabeth Schmidt, *Peasants, Traders, and Wives: Shona Women in the History of Zimbabwe, 1870 – 1939* (James Currey: London, 1992); Elizabeth Schmidt, "Negotiated Spaces and Contested Terrain: Men, Women, and the Law in Colonial Zimbabwe, 1890-1939," *Journal of Southern African Studies*, 16, 4 (1990): 622-648; Roberts, 1999; Roberts, 2005.

> one of the structural processes that shaped domestic violence during colonial and postcolonial periods was the insertion of the household into the broader structures of colonialism – where colonial governments sought to collect revenue (in the form of taxes) from Africans to pay for colonialism and the household head was normally responsible for payment. Taxation added to the financial challenges of the household head, who in turn likely drew on his household labor to help generate the cash or the commodities required to pay the tax.[35]

For instance, in Gambia, the 1895 ordinance introduced the Yard Tax, levied on individual families domiciled in a compound (yard). By the same token, the law also targeted "strange farmers"-young men mainly outside of the Gambia, who came seasonally to cultivate groundnuts.[36] It could be seen that many of these laws were meant to control populations in order for them to be used in promoting the cultivation of groundnut – which remained the only cash crop in Gambia.

However, as spelt out in the introduction, European presence in colonies like Bathurst also provided windows of opportunities for women to free themselves from strict male control or to negotiate their positions within their marriage households as women took advantage of marriage laws enacted by the British. For instance, during this period, a plethora of ordinances on marriage issues were enacted including the Marriage Ordinance (1862), the Married Women's Property Bill (1883), and the Muhammedan Law Recognition Ordinance (1905), as well as the Civil and Christian Marriage Ordinance (1938) and the Dissolution of Marriages Act, 1967. Why were these laws introduced and what effect did they have on the relationship between men and women?

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[35] Emily Burrill, Richard Roberts, and Elizabeth Thornberry, eds. Domestic violence and the law in colonial and postcolonial Africa (Athens: Ohio University Press, 2010), 9.

[36] Strange farmers are more explored in the next chapter.

The British colonial administrators sought to control marriage because they were concerned with issues of polygamy, child or early marriage, and slavery and concubinage. In the early 1900s, slavery was still an active institution in the Senegambia region of which women and children were the main victims. In fact, one of the last Muslim militant clerics, Musa Molo, had many women and children in his custody at the time of his capture by the British.[37] A large number of the women were his slaves. Scholars also indicate that during slavery men could sell their wives, children, and servants and that the kidnapping of small children disguised as adoption occurred during the colonial period.[38] As an attempt to stop slavery and abuse of women, the British introduced ordinances to ban the trade.

In 1862, one of the first of such laws that was enacted was the Marriage Ordinance. The ordinance provided that in the case of a person who was under twenty one and wished to contract a marriage, the consent of the parents or guardians or judge of the Supreme Court was necessary. This law was supposedly meant to curtail child marriages. The originator of the law was Governor Colonel D'Arcy, who was eager to please the powerful Islamists in the north bank

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[37] Alice Bellagamba, "Slavery and Emancipation in the Colonial Archives: British Officials, Slave-Owners, and Slaves in the Protectorate of the Gambia (1890-1936)," *Canadian Journal of African Studies*, 39, 1, (2005): 5- 41.

[38] For the predicament of women and children during slavery and colonial rule in Africa see, Richard Roberts and Suzanne Miers eds., The End of Slavery in Africa (Madison: The University of Wisconsin Press, 1988); Paul E. Lovejoy and David Richardson, "The Business of Slaving: Pawnship in West Africa, c.1600 – 1800," *The Journal of African History,* 42, 1 (2001): 67 – 89; Elizabeth A. Eldredge, *Power in Colonial Africa: Conflict and Discourse in Lesotho*, 1870-1960 (Madison, Wisconsin: The University of Wisconsin Press, 2007). The issue of child marriage even today is common among many African societies, in particular Muslim societies. For example, according to a recent study by UNICEF in six West African countries showed that 44 percent of 20 – 24 year old women in Niger were married at the age of 15. See UNICEF, Early Marriage: Child Spouses, *Innocenti Digest*, 7, (Innocenti Research Centre, Florence, March, 2001), 2; See Emily Burrill, Richard Roberts, and Elizabeth Thornberry, eds., *Domestic violence and the law in colonial and postcolonial Africa* (Athens: Ohio University Press, 2010).

such as Maba Jahou Bah (because by this time, Maba was one of the leaders of the wars between Muslims and non-Muslims and these wars involved the Europeans). However, the legislation did not have much impact on the status of married women as it did not negate marriages conducted before its enactment. The law which affected them most was the Married Women's Property Bill (1883) that gave widows property rights. Nana Grey-Johnson notes that "the passage of the bill in the legislative council guaranteed legal protection to women across the colony against husbands and male siblings who used every means to rid gullible women of their personal property and hard-earned finances."[39]

This ordinance deserves closer scrutiny, not least because it was the positive result of a petition sent to Governor Goldsbury by a group of twenty two Bathurst residents from all walks of life including merchants, traders, shipwrights, teachers and pensioners, who expressed deep concern about the suffering of wealthy Bathurst married women who had lost their riches to greedy husbands and male relations. Their petition, dated 22 January 1883, asked the Bathurst Governor to enact a law that would protect such industrious women from financial ruin induced by extravagant spouses. Moreover, the gentlemen, who included J D Richards, Samuel Bah, as well as Foday Dabo, John Faye, Harry Finden, Samuel Joof and C Bright Lewis, believed that such a law would give women the right to acquire and hold property of their own, and therefore become economically independent. The colonial government reacted positively and swiftly because women merchants, especially kolanut and tobacco dealers, accounted for over 40 per

[39] Nana- Grey Johnson, *The Story of the Newspaper in the Gambia* (Banjul: BPMRU, 2004), 50.

cent of the revenue from import custom duties at the time, and were therefore deserving of protection from financial ruin and bankruptcy.[40]

In 1905, the colonial authorities introduced the Muhammedan Law Recognition Ordinance that gave legitimacy to children born in Muslim marriages as measures to protect children. However, Muslims saw this legislation as grossly inadequate as it did not consider Muslim marriages as valid or legal. Pressure from the Muslim community in Bathurst led by Sheikh Omar Faye and Ousman Jeng resulted in the enactment of the Ordinance for Muslim Marriages and Divorces (1938) which made such marriages legal and valid and required that they should be registered.[41] Perhaps, Faye and Jeng's efforts were to please the British or to gain recognition among their fellow Muslim leaders with whom they had long held different opinions. The British also created the Infanticide Act. This was enacted in England in 1934 and made baby killing a capital offense there. Subsequently it led to the Criminal Code (Amendment) Ordinance of 1938 which also made the act a capital crime in The Gambia.[42]

The Civil and Christian Marriage Ordinance of 1938 sought to integrate civil marriages and Christian marriages (done in a church or chapel). However, the laws again favored colony women over women in the protectorate because, until 1957, all the four churches allowed to handle Christian marriages were in Bathurst. Therefore, on many occasions, the Governor

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[40] Hassoum Ceesay, *Gambian Women: an Introductory History* (Banjul: Fulladu Publishers, 2007), 64.

[41] See NRS, CSO3/133.

[42] See Ceesay, (2007. In fact, even nowadays, infanticide is a major issue in Gambia. The Point Newspaper in one of its editorial notes that, "the issue of baby dumping in the country, especially among young girls, is no doubt, a cause for concern, and a national problem. Almost on a daily basis, one reads newspapers or sees on television people arraigned for dumping their new-born babies in pit latrines or even at dump sites." The Point Newspaper, Tuesday, February 08, 2011.

declared null and void marriages officiated in churches outside the colony. Though this legislation was significant in matrimonial issues, it hardly affected Muslim women, most of whom lived in the protectorate and could construct civil marriages in mosques and homes without marriage certificates.

The Dissolution of Marriages Bill of 1967 gave the Supreme Court jurisdiction to dissolve a monogamous marriage where one spouse became converted to a religion recognizing polygamy and the other spouse was not converted. It was generally seen by critics as a rushed attempt to facilitate the Prime Minister's divorce of his wife, Augusta, following his return to Islam and her refusal to be converted. Earlier in 1967, the Gambia Court of Appeal had allowed an appeal by Lady Jawara against a Lower Court ruling allowing the Prime Minister's petition for divorce. The Bill was passed by MPs and soon became law**.** The preamble of the Act reads:

> 'Notwithstanding the provisions of any other enactment having the force of law in The Gambia, the Supreme Court shall have the jurisdiction to dissolve by decree any marriage at the instance of another party thereto in the following circumstances:
> a. The marriage was in monogamous form recognized by the law of The Gambia; and
> b. Since the celebration of the marriage one of spouses has in good faith and to the satisfaction of the court become converted to a religion which recognizes polygamous marriages and the other spouse has not become converted.[43]

Women activists such Cecilia Cole (who later became the first female Gambian deputy speaker of parliament in 1997 and died in 2007), Mary Samba, and Diana Christensen believed that the dissolution bill was first and foremost a discriminatory and sexist law which was designed to stifle women's marriage rights. But above all, women challenged the bill because it was seen as discriminatory, especially against Christian women who may wish to convert to Islam. The bill required that Christian women must first get a divorce from their Christian

[43] For the effects of and reactions to Dissolution of Marriages Bill 1967, see Hassoum Ceesay, *A brief Historical Insight into Gender Based Violence in The Gambia 1886 – 2005* (Banjul: The Gambia, Property of the African Centre for Democracy and Human Rights Studies, 2005).

husbands to good faith before they could marry again into Islam. However, a Christian man could marry as soon as he embraced Islam – a religion that permits polygamy. In answer to the protests, governments MPs were adamant that the bill was meant to solve some of the problems arising from the existence of polygamous and monogamous marriage systems in The Gambia.

Scholars suggest that these colonial mechanisms (ordinances) were in effect a form of control and appropriation. The regulations could be categorized at two levels. At one level, colonial administrators were able to contain local populations by defining the legal terrain and thereby delimit its boundaries. As Roberts and Mann conclude, these rules were not only reproducible, but unalterable.[44] Mahmood Mamdani also aptly described this process as the "containerization of the subject people."[45] This meant that Africans lost all possibilities of self-governance and freedom to traverse legal boundaries according to their own "customary" and "traditional" practices because of alterations Europeans made in the realm of law. Also, these promulgations have given some groups of the local populations (chiefs, interpreters, and messengers) the possibilities of empowering themselves in order to exploit their subjects.

I would argue that in the case of the Gambia, these laws did not only help women to challenge general male patriarchal issues but also gave them opportunities in their matrimonial homes especially in issues pertaining to property rights. As shown in chapter three, many women brought cases against their husbands over personal items such as jewelry and against their parents over matters of inheritance. The laws also gave women and children opportunities to escape from servitude, as demonstrated in chapter three in the case of one Isatou Jarju, who ran

[44] Roberts and Mann, 1991, 4.

[45] See Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ.: Princeton University Press, 1996).

away to Bathurst on suspicion that her husband wanted to sell her and her children into slavery. The court allowed women like Isatou to free themselves from bondage and from abusive husbands.

In colonial Bathurst, there were different Muslim societies of interests, institutions, individuals all of which played important roles in the establishment of the Muslim court by contesting and challenging one another.

Muhammedan School and Bathurst Mosque

The establishment of the Muslim court, Muhammedan school, and the Bathurst Mosque in many respects symbolizes tensions which were already brewing not only between Africans and Europeans, but among Africans themselves. The settlement of Bathurst in 1816 saw the development of Christian mission schools at the request of Sir Charles MacCarthy, the first Governor of Gambia. For instance, in 1821 the society of the friends of Wesleyan Missionaries opened the first schools in Cape St. Mary's and in Bathurst and later at MacCarthy Island in the interior of the country.[46] Unlike their Muslim counterpart, the Christian community enjoyed many years of colonial education which made them employable in the colonial service. In fact, Lamin Sanneh points to similar developments in Sierra Leone where one of the paramount desires of the Muslim population was their wish to emulate Christian performance in modern education. To Sanneh, the Christian example was the direct, though sometimes hidden, stimulus for Muslim efforts in achieving their desire of gaining European education.[47]

[46] Gray, 1966, 311–314.
[47] Sanneh, 1997, 167.

To this end, an earlier demand of the Bathurst Muslims met by the colonial rulers was the request for a Western school where Muslims would study the Quran in the evenings and read the Western curriculum in the mornings. This meant that Muslims would study in English schools and be trained in British education and culture, yet retains their Muslim identity and culture. This led to the establishment of a Muhammedan school in 1903. The Muhammedan School, however, quickly became a center of controversy because of its centrality in being a source of employment and in the search for what could be regarded as Muslim identity – a school that Muslims could claim ownership.[48]

Following its establishment in 1903, the Muhammedan School came under the control of the Trustees of Banjul Muslim Elders and enjoyed a grant in aid of 500 pounds annually given by the Government of the Gambia and twenty pounds for repairs. The Governor in 1929 ordered that the management of the school and the Board of Trustees must include Ousman Jeng as member of the Legislative Council, the European Inspector of schools, and Imam of Banjul, Omar Sowe. However, the Governor's decision was refused by some Muslim elders, including Momodou Jahumpa, who was described as the sole survivor of the Trustees of the Muhammedan School. Jahumpa in particular was accused of hiring the school building for dances to pocket the revenue and gain from other benefits. Jahumpa and his supporters of the Bathurst Muslim community, in a petition to the Secretary of State for the Colonies dated 2/9/1929, argued that neither the subvention made towards the upkeep of the school in the cause of education, nor Ousman Jeng's nominal position on the Legislative Council, was sufficient authority against the

[48] Head of Muhammedan School together with the Qadi of the Muslim Court and membership of the Legislative council were one of the well-paid jobs during this period. These positions continued to be well contested for almost four decades.

Trustees' legal rights to substitute a school board in the best interest of their religion and their community.[49]

Another demand by the Muslim elders of Bathurst, which was also met by the colonial authorities, was the request to have a member on the Muslim Legislative Council. This was accomplished with the appointment of Alhagi Ousman Jeng in 1920. In 1920, when Governor Armitage granted the Muslim elders the privilege of electing by public vote a representative of Muslim interest on the Legislative Council, Jeng won the seat, beating other candidates like Sheikh Omar Faye. However, after his first term on the council, the Government disregarded the elective principle and simply reappointed him by nomination, despite the protests made against this procedure by Muslim elders. Jeng continued to sit on the council until 1932, when he was replaced.[50] These issues show the guardianship position of the British colonial officials and their role as appointing officers because they could change the rules whenever they saw it necessary without consulting their subjects.

The controversy surrounding the school centers on allegations of adultery against Mr. Jeng and condonement of such actions by Imam Omar Sowe. Furthermore, Jahumpa and his colleagues believed that these offenses were against Islam and therefore good enough cause to exclude Jeng and Sowe from the management of the school.[51] By invoking Islamic laws, Jahumpa and his colleagues were fervent in their determination to remove Jeng and Sowe from office.

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[49] NRS, CSO3/144.

[50] NRS, CSO3/133, 2/9.1929, Momodou Jahumpa and others to SOS for the Colonies.

[51] NRS, CSO3/133, 20/4/1930, Workman to Lord Passfield.

The problems of the Muhammedan School became so serious that the matter found its way to England. On the April 11, 1930, in the House of Commons in London, Mr. Horabin asked why the Government of The Gambia permitted the use of a school building (Muhammedan school) for a meeting of the Ship Owners Association while refusing the use of a similar facility to the Bathurst Trade Union.[52] It can be seen here that the quarrels surrounding the school spilled over into the relations between different social groups and institutions in Bathurst – the Ship Owners Association, the Bathurst Trade Union, and the Bathurst Mosque. The Bathurst Mosque, however, was seen as one of the most important institutions to control because of its congregation and its centrality in the lives of Bathurst Muslims.

Another institution that was central in the division among Bathurst Muslim elders was the position of imam and membership of the Bathurst Mosque. The development of the Bathurst Mosque was directly connected to the growth of the Muslim court system as they were the two most revered Muslim institutions in Bathurst, the control of which was zealously contested. The leaders of the two institutions were always in agreement whenever there was dispute among the Muslims. Perhaps it was important for the qadi and the imam to always remain in the favorable books of colonial government as leaders of Muslims and also because the qadi was on government's pay role. Though the imam was not on government's pay role, the government had vested interest in the management of the mosque in order to keep an eye on the activities of the Muslim population.

The story of Bathurst Mosque, located along in what is now Independence Drive, started in 1854 when the then governor allocated a plot of land for the mosque to three Muslim elders who requested it on behalf of Bathurst Muslims. A grass hut was built on the side for worship.

[52] NRS, CSO3/133.

Soon it was realized that the hut was too small and Imam Makaude Amar led the efforts to build a permanent structure in the mid-1880s. Money collected among the faithful yielded enough to build a permanent structure. The direction and control of the building project was left in the hands of the master carpenter Momodou Njie of the Muslim Carpenters Society. Every member of the community who was able to give his labor or his workmanship for free for God did so. It was built by the community for the community. Therefore, it could not be the property of any person or society.[53]

Another Imam of the mosque was Gormak Njie, who was replaced by Momodou Njie. Momodou Njie remained as Imam for twenty six years and during his time extensive alterations and refurbishments were done by his Society of Carpenters. Funds for this refurbishment were raised from Muslims, merchant firms, government officials, and Governor Denton. Therefore, it could be argued that the Muslim community gave the Carpenters Society the honor of selecting the Imams of the Mosque. After some time, the Carpenters Society splintered into the Juma (Mosque) Society or Meri Kebbeh Society, which was not registered but claimed to be an ally of the Carpenters Society. It was the Juma Society that brought the case against Jeng and Imam Omar Sowe in 1930. The society had members like Meri Kebbeh, Momodou Jahumpa, Cham Chareh, and Masatey Jahateh.[54]

One major consequence of the difference between Muslim elders was the idea from the then chief justice Aitkin in late 1929 to abolish the Muhammedan court. However, the governor insisted that it would be a mistake to do so because it had a certain value, even if at times it was

[53] NRS, CSO3/133.

[54] NRS, CSO3/133, 29/3/1929; Memo from Judge of the Supreme Court of The Gambia to Honorable Acting Colonial Secretary, Bathurst.

more of a club than a court. It was a meeting place for Muslims and it was something which they felt was theirs and, had it been abolished, it would have been regarded as a retrogressive step.[55]

One wonders why all these societies were being formed at the time. Bill Freund comments on the emergence of voluntary associations as new forms of social glue in African cities. He notes that such associations are at once eminently practical in the creation of networks that sustain economic linkages and providers of prestige and status.[56] It could be that in Bathurst, members of these associations supported each other socially and economically by attending member's social functions (naming and marriage ceremonies, and death rituals).

Contested Terrain: Intra-Muslim Rivalry

The intra-Muslim dispute, which for years had disorganized the social and religious establishment of Bathurst and divided their ranks into rival factions, was finally settled in September, 1935, when at a meeting of nine hundred Muslims of all sections of Bathurst, a new Muhammedan Society was formed with a view to promote the unity, order, and good government for the Muslim community of Bathurst.[57]

It would seem reasonable at this point to ask why it was easier for the Muslim communities to deal with colonial masters than working together as a community. The problems that emerged in the Bathurst Muslim court were of a different nature than the conflicts and tensions that troubled the Muslim court of Kaye, Senegal. Rather than fighting to be colonial

[55] NRS, CSO3/133.

[56] Bill Freund, *The African City: A History,* (Cambridge University Press, 2007), 87.

[57] NRS, CS02/1610, 1936; Rules of the Muhammedan Society.

citizens, the Bathurst Muslim elders were struggling to have a separate legal system that would address the needs and aspirations of Muslims in the Gambia colony and protectorate.[58]

Consequently, as colonial rule progressed, it became apparent that the Muslim community remained divided over issues such as qadiship, management of the Muhammedan school, imamship of the Bathurst mosque and political representation in the legislative council. First, the political differentiation centered on the moderate versus the radical tendency among African elders in Bathurst. The moderate faction were perceived to be closer to the colonial establishment and included Sheikh Ousman Jeng – the first Muslim member of the legislative council and Sir Sam Forster (a Christian) the longest serving legislative council member (1906 – 1940) while, the radicals, who were seen as anti-colonial, included Sheik Omar Faye, Muslim legislative member and Edward Frances Small, a Christian trade unionist.

Ethnically, Muslim leaders remained divided over places of birth and caste origins which in many African societies engender friction and acrimony. For example, part of the opposition to Jeng's appointment as a Muslim member of the legislative council was based upon his smith origins which disqualified him for a leadership position. Also some of his opponents such as Sheikh Omar Faye was of griot (musicians) origin, which was also largely regarded as a low caste. J Ayo Dele Langley also suggests that the cleavage in the Muslim community could also be because they were divided into castes and classes and also because of differences of a religious nature.[59]

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[58] See Shereikis, 2001.

[59] J Ayo Dele Langley, "The Gambia Section of the NCABWA," *The journal of the International African Institute*, 39, 4 (1969) 382 – 395, 388. In The Gambia, goldsmiths, black smiths, and silver smiths are characterized as a caste group together with griots. For more information on Caste and social differentiation, Also see, Tamari Tal, "The Development of

Furthermore, the differences among Muslim leaders could be explained by religious differences, as each of the faction leaders belonged to a different Islamic Tarikh, namely Tijaniyyaa and Qadiriyya. The Qadiriyya and the Tijaniyya are two popular Islamic orders which gained currency in the Senegambia during the eighteenth and nineteenth centuries respectively, as most local clerics embraced either one or the other. Religious differentiation remained at the center of intra-Muslim rivalry as they, the Muslims, opposed each other in holding key positions in government. For instance, in a letter to the Acting Colonial Secretary, Cherno Jagne, one of the Bathurst Muslim Elders in 1935, on the retention of one Mr. Ousman G Njie on the staff of the Muhammendan school, wrote:

> I am to state, Sir, that my fellow signatories desire me to express to you, for the information of His Excellency, our great disappointment at this decision, for us, even had Mr. Njie possessed all the merits (which we did not concede) attributed to him by His Excellency's adviser, we, as Muslims, feel it against the dictates of our religion, to place our religion, to place our children, under the control of one, whose status in Islam today, is that of an enemy of the faith, under the present circumstances, the only courses open to us, as parents and guardians of the pupils, is to reluctantly remove our children from the school, thus taking them from the 'orbit' of Ouman Njie's influence.[60]

The Muhammedan school, from the time of its establishment, continued to be a source of dissent among the Muslim communities over the retention of one Ousman Gormack Njie as staff of the school. Njie's case as demonstrated in the above quotation was another example of the

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Caste System in West Africa," *The Journal of African History, 32, 2* (1991): 221-250; D. M. Todd, "Caste in Africa,? "*Africa: Journal of the International African Institute*, 47, 4 (1977): 435-440; Cornelia Panzacchi, "The Livelihoods of Traditional Griots in Modern Senegal," *Africa: Journal of the International African Institute*, 64, 2 (1994): 190-210.

[60] NRS, CS03/144, Committee of Management of Mohammedan School.

infighting between the Jeng and Faye factions (Jeng's was pro-government, whilst Faye was seen as an agitator).[61]

In fact, Langley also notes the differentiation among Bathurst Muslim elders, "in Bathurst, colonial municipal politics revolved around the Muhammendan Community which had its internal differentiation and cleavages. Some of these differences were over opposition or support by leading Bathurst Muhammedan elders to the Nationalist Association of the NCBWA (National Council for British West Africa, established, in the 1920s)."[62]

By and large, the rivalry within the Muslim Community in Bathurst remained essentially the personalization of the cleavage in the community over the question of elective representation. The underlying tension of this cleavage was the accusation leveled against Ousman Jeng of adultery and Imam Omar Sowe of condoning the infidelity. In Bathurst, the majority of the Muslims followed the conservative "no change" line of Alhagi Ousman Jeng but the influential minority among them desired a modest form of elective representation. In fact, some Bathurst Muslim elders, those who accused Ousman Jeng of adultery after he fathered a child outside marriage, were the same group who accused the Imam Omar Sowe of solemnizing the birth of the child and officiating at Jeng's subsequent marriage to the woman with whom he had committed adultery. Momodou Jahumpa, Essa Drammeh and other Muslim elders persisted in their attempt to disallow Jeng and Sowe a place in the leadership of Bathurst Muslims. After all the legal maneuvers failed, the accusers petitioned the Prince of Wales and British MP, Mr. Horrabin. The petitioners were acting on the presumption that a charter of religious right and liberty was declared to them by H.R.H. the Prince of Wales on the occasion of his memorable

[61] NRS, CS03/144, 20th June, 1939; From Almami of Bathurst to Governor Southern.
[62] Langley, 1969.

visit to The Gambia when, in his address to Muslims declared, "the King is my father, under whose rule you have complete freedom to worship the one True God, has charged me to give you a message of good will, for he has heard with pleasure that you dwell side by side with other races and religions in peace, keeping the law which is administered to you by the Qadi in your own court."[63] The accusers hoped that their petition would be upheld because they regarded this allegation as a matter of public importance affecting policy of the administration and the mutual loyalty which binds all the Muslims living under the Christian government. One of the main concerns for Jahumpa, Drammeh and their supporters was for Jeng and Sowe to be tried in an Islamic court, and if found guilty, they (Jeng and Sowe) be no longer recognized by the government as leaders and representatives of the Muslim population.[64]

The problems between Muslim elders were so serious that colonial authorities attempted on several occasions to bridge the gap, but these reconciliation meetings were held with police guard. At one point, the colonial government warned the Muslim leaders who were quarrelling over the leadership of the Bathurst Mosque of impending consequences if the Muslim elders disturbed the peace in the city as government would not "tolerate for one moment disorder or breach of the peace or any other act or word that might cause a breach of the peace."[65] Though opponents of the Imam of the Bathurst Mosque tried to sway the colonial government to their side, the governor insisted that he would not "close the door of the mosque or any other church

[63] NRS, CSO3/133; March 26th, 1926, letter to Governor, Sir Edward Brandle Denham.
[64] NRS, CSO3/133; September 2nd, 1929, Letter signed by Jahumpa and Drammeh.
[65] NRS, CSO3/133, April 8th, 1929. From the Commissioner of Police to the Hon. Acting Colonial Secretary,

or interfere with religious freedom of any denomination."[66] It could be seen that one of the main concerns of colonial administrators was the maintenance of peace and security, and thereby refused to be dragged into the fight between different Muslim groups.

Contested Terrain: Euro – African Relations

As the opening story of this chapter demonstrates, the dispensation of justice rapidly eroded from local rulers into the hands of the Europeans. In 1893, barely three years after the Salikenye incident, in his reports of the south bank province, another travelling commissioner reports that:

> With regard to nature of jurisdiction it has been the custom for all complaints to be made to the Alkaide who holds courts or councils and orders the offenders to be punished. The Alkaide's eldest son holds the appointment of chief constable and has to see that the punishments are all carried out. In very few cases the Alkaides refer the cases to the chief. The Alkaides now fully understand that they have no power to settle cases in their towns, all cases have to be referred to me.[67]

This is testimony to the fact that the British had assumed new roles for themselves as referees in the administration of justice or more equivocally as "controllers of customs" in the dispensation of justice because all matters of law rested with the British.

In many parts of Africa, including the Gambia, "traditional judicial systems were undergoing tremendous influences and changes under the British colonial officials.[68] In one

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[66] NRS, CSO3/133.

[67] NRS, ARP 28/1 South Bank 1893, Travelling Commissioners Reports.

[68] See for example Sara Berry, "Hegemony on a Shoestring: Indirect Rule and Access to Agricultural Land," *Africa: Journal of the International African Institute*, 62, 3 (1992): 327-355; Mamdani. 1996; Karen E. Fields, *Revival and Rebellion in Colonial Central Africa* (Princeton, NJ: Princeton University Press, 1985).

report, the Travelling Commissioner of South Bank notes that "though the local people objected at first to these British interferences, after some explanations, the people seemed satisfied and pleased that the government had come forward to help them. The Alkaides seemed specifically pleased at the idea that the responsibility of punishing their own people has been taken out of their hands. The Commissioner adds that the domestic quarrels, the laws of the Quran, seem well drawn up to satisfy both parties in these quarrels."[69] Here, it shows that by this time, the British accepted the rulings of the "ulama" based on the Quran, but at the same time used their personal judgments to prevail on decisions made by local judges. The passages further confirm the point that matters of jurisdiction were slipping away from "traditional" authorities to the new British rulers.

What is also apparent in these reports is that the dispensation of justice "traditionally" had two main pillars; the *Alkali* and the *Almami.* The dispensation of justice in Muslim communities in the Gambia rested with the Alkali. The majority of people outside of Bathurst continued to rely on these "traditional" administrative structures found in every village.

The *Alkali* was and is the administrative and political head of the village and usually comes from the founding fathers of the settlement. Traditionally, the *Alkali* was the first stop in the adjudication of cases concerning family and land matters. It was the *Alkali* who gave permission to others who wanted to settle in his village, and it was he who distributed land to the new arrivals. Apart from the dispensation of justice, the *Alkali* also exacts and collects taxes, and mobilizes labor for the clearing and improvement of roads, causeways, and rest houses, particularly after the implantation of colonial rule in the late 1880s.

[69] NRS, ARP 28/1, Vol. II, South Bank, 1893-1899, Travelling Commissioner's Reports.

On the other hand, the *Almami* dispensed justice on the dictates of the Quran. He was the most recognized religious leader of the community and usually presided over cases relating to marriage, divorce, and child custody because he solemnized births and marriages. The *Almami* also taught the Quran, led the community in prayers and also provided spiritual protection and guidance to the community.

In addition, the *Almami* had moral authority over the village community as the custodian and guardian of secrets connected with making of amulets and charms, divination, and possession of mystic knowledge.[70] Seventeenth and eighteenth century English traders and explorers in the region mentioned in their reports about the works of some marabouts. Richard Jobson commented that clerics had "free recourse through all places, so that howsoever the kings and Countries are (sic) at warres, and up in armies . . . still the Marybucke is a privileged person."[71] Mungo Park, traveling through the Gambia in the 1790s, was told the amulets could protect the owner from snake and alligator bites, hostile weapons and thirst and hunger and were generally worn to conciliate the favor of superior powers under all the circumstances and occurrences of life. These marabouts were much sought after already in the nineteenth century for they knew such techniques as bleeding and leeching, they gave hot vapor baths for fever, and they were skilled in setting fractures and insuring success to any enterprise.[72] More recently, historians of Senegambia also commented extensively on the role and authority of clerics in the

[70] See Sanneh, 1997.

[71] Richard Jobson, *A Discovery of the River Gambra and the Golden Trade of the Aethiopians* (London: Dawsons of Pall Mall, 1623), 99.

[72] Quinn, 1972, 54-55.

region.[73] Today, the positions of the *Almamis* are not much different as they continued to be teachers and guardians of esoteric knowledge. Seemingly, marabouts continued to enjoy a rise in their prestige based on the large followers they attract and the material wealth they accrue as result of the belief that the marabout can fulfill the spiritual and material wishes of the followers.[74]

Although not all these stories took place in Bathurst, the rural and urban cultural landscapes were being constantly affected as a result of the movement of people from one to the other and vise versa. Migrants and travelers from the protectorate and from other parts of the West African sub-region frequented the colonial city, including itinerant Muslim clerics and scholars. Some of these scholars were knowledgeable in Islamic law and could have influenced the legal discussions in Bathurst.

During the period under study, (especially from 1905, when the court was established, to the 1960s, when Gambia gained political independence), Bathurst and the rest of the protectorate were undergoing tremendous socio-political and economic changes that impacted African – European relations, as well as intra-African relations. Socially, there were a series of population movements from the protectorate to the tiny city as a result of the fighting between Muslims and non-Muslims and Europeans.[75] This was also at a time when slavery and its woeful effects still

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[73] For example, See Curtin, 1975; Wright, 2010.

[74] For more discussion on marabouts (clerics) and their wealth see, Benjamin F. Soares, *Islam and the Prayer Economy: History and Authority in a Malian Town.* (Ann Arbor: The University of Michigan Press, 2005); Cruise, O'Brien D.B., *The Mourides of Senegal: The Political and Economic Organization of an Islamic Brotherhood* (Oxford: Clarendon Press, 1971).

[75] For population movements in the region, see Andrew, F. Clark, "Internal Migrations and Population Movements in the Upper Senegal Valley (West Africa), 1890-1920," 28, 3 (1994): 399-420.

persisted in the country. For example, in northern Nigeria, Paul Lovejoy and Jan Hogendorn note that while Britain suppressed the slave trade and slave raiding in parts of the former Caliphate, enslavement, especially kidnapping, and slave trading lasted well into the 20th century.[76] Gray also suggests that Foday Kabbah, one of the Islamists in the Senegambia carried on slave raiding well into late nineteenth and early twentieth century.[77] Also, during the fighting between the Muslims and non-Muslims from 1850s to 1900, the disintegration of many families and changes in identities took place as people converted to Islam. In 1899, traveling commissioner of Kombo and Foni reported that "there has been a great advance of Mohammedanism this year which I understand is chiefly due to the death of Soninke women."[78] The report implied that for men to marry they must convert to Islam in order to marry Muslim women.

The establishment of the Muslim and "native" courts in the Gambia, in some ways, helps highlight the complexities of the European and Muslim legal systems. Politically, colonial rule brought with it new forms of representation and leadership to which the local population needed to adjust and adapt. The colonial governor did not only appoint the qadi and his assessors, but paid their salaries and also helped in the establishment and building of the main Bathurst Mosque and Muhammedan school. This situation made the qadi critical in Euro-African relations. Socially, the qadi remained part of the Muslim community with its diverse social relations. All of these were important to the establishment of the Muslim court in not only the interaction between Europeans and Africans but also the divisions between the Bathurst Muslims.

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[76] Paul E. Lovejoy and Jan S. Hogendorn, *Slow Death for Slavery: the course of abolition in Northern Nigeria, 1897-1936* (Cambridge: Cambridge University Press, 1993), 4.
[77] Gray, 1966.
[78] NRS, ARP 30/3, 1899, The Travelling Commissioner Report Kombo and Foni.

It should be stated that Muslim identity in the region had been established before the arrival of the Europeans, and that the nature of colonialism and colonial rule did not allow Africans to emerge as equal competitors or partners, even though Africans could meander through the weaknesses of the colonial state. Peter K. Tibenderama notes that in the power relations between emirs and the colonial administration, the emirs had no power of their own as British authority was absolute. He contends that the irony of indirect rule in the Sokoto Emirate (1900-1906), made this very clear to the emirs, as declared by Lugard in his address to the newly appointed Sultan of Sokoto and other Sokoto dignitaries on March 21, 1903: "the old treaties are dead, you have killed them. Now these are the words which I, the High Commissioner, have to say for the future. The Fulani in old times under Dan Fodio conquered this country. They took the right to rule over it, to levy taxes, to depose kings and to create kings. They in turn have by defeat lost rule which have come into the hands of the British. All these things which I have said the Fulani by conquest took the right to do now pass to the British."[79]

The systems of administrations imposed by these powers, according Michael Crowder, were ad hoc and greatly influenced by the personality of the men imposing them and the circumstances under which a particular area was occupied by conquest or by treaty.[80] Muhammad S. Umar also notes that "despite their military superiority, the British did not have

[79] Tibenderama, 1988, 68-69; See also *Lugard,* 1970.

[80] See Michael Crowder, *West Africa Under Colonial Rule* (Evanston: Northwestern University Press, 1968).

the resources or the personnel totally to discard the institutions of the Sokoto Caliphate or replace the Muslims who ran those institutions.[81]

Conclusion

The story of the Muslim court is important because of its centrality in the dispensation of justice and maintenance of peace by resolving matrimonial issues between Muslim men and women which the British saw as part of efforts to maintain order in society. The study of the court also helps in understanding not only the history of social relations and political power in Bathurst, but also highlights complexities of the European and Muslim legal systems in a colonial context. To a large extent, the story of the court brings to fore a larger sense of contestations between Bathurst Muslim elders and how some Muslim elders came to agreements with Europeans for reasons of social, economic, and political opportunities ushered in by colonial rule.

Although the colonial authorities did not have a definitive official policy for its dealings with the Muslim communities, they had what I characterize as "charm offensive" – a strategy usually devised by colonial authorities on the ground to win the hearts and minds of the colonized – here, the Muslims. Both the colonial authorities and the Muslim communities by deed and words made conscious efforts to allay each other's fears. The readiness of both the colonial authorities and the Muslim elders to work together to defend their mutual interests extended beyond European benevolence to Africans. The relationship was more that of negotiations in which Africans knew how to bargain and were also delivering their part.

[81] Muhammad S. Umar, *Islam and Colonialism: Intellectual Responses of Muslims of Northern Nigeria to British Colonial Rule* (Leiden: Brill, 2006), 7.

"Negotiated share" also deemed that the Bathurst Muslim elders would compromise at great lengths to accommodate colonial rule because by this time, Africans had lost all forms of united opposition to the British. Despite this loss of African autonomy, some individual Africans could maneuver through the colonial administrative system. Certainly Africans knew that they had limited bargaining power which remained in the military might of the British. The British, too, negotiated with Muslim elders in order to maintain law and order to protect British interest, particularly in trade and political control.

In the next chapter, I describe a wide variety of cases which were brought before the Muslim Court in Bathurst. The cases centered on issues affecting Muslim marriages, divorce, child custody and maintenance. The peaceful resolution of such issues was necessary for stability in the Muslim community and by extension in colonial Gambia. More so, the cases show how women got favorable outcomes against abusive husbands in the court.

Chapter Three
Contending Issues: Marriage, divorce, and child custody in the Muslim Court

Matrimonial Issues in the Muslim Court of Bathurst

On September 12th, 1907, Sainabou Amah appeared in the Muslim Court of Bathurst against her husband Draman Jallow and stated under oath that her husband came to her during the hours of sleep, wanting to spend the night with her. Sainabou refused saying that it was the other wife's turn. The husband insisted and accused Sainabou of infidelity, "You refused me but you don't refuse those men who used to cover you as fowls." After the confrontation, he struck Sainabou. The next morning, the husband called one Matar Sillah and said to him, "Tell Sainabou to go to the market. If she does not go, I will thrust her into her mother's posteriors until day light."

In her testimony, Sainabou further revealed that when the husband came home in the evening, he said to her, "I know that I won't be able to keep you again but I have given you two pagnes (wrap-arounds), return them to me and a pair of earrings and an umbrella. You can as well go back to your mother." Sainabou responded that she would not go and had no property to pay as long as she remained married.[1] The husband retorted "Go home! If you go home, you, your sister, and your mother will commit fornication and adultery and then you will get the means of repaying me." The husband further angrily said to her "Your elder sister used to commit fornication with your father, Macordeh Amar, and your mother was so addicted to fornication that she killed your father; your mother also committed fornication and adultery with

[1] In Muslim marriages only dowry can be returned/refunded to the husband. Material things given at the time of marriage unless specified cannot be returned.

goldsmiths and slaves." In her testimony, Sainabou further said that her husband Draman had driven her out and taken all the properties he had given her.

In his defense, Draman Jallow took the oath and the Qadi advised him to reply to what his wife had said. Draman said that on the day in question he had had a fever, and the other wife's turn was over so he went to Sainabou's house and lay on a sofa. There, Draman questioned Sainabou's conduct: "At first I used to thank you, but whenever your mother came from Bakindiki village, you never used to do anything good," on the grounds that Sainabou went to her mother's house without permission from him.

Draman further testified that late that evening, he got up and went to Sainabou's bed and sat down till 1 am. He asked Sainabou to massage him but she said no. According to Draman, he got up and wanted to make love with her. Sainabou kicked him with her foot which had a heavy anklet. When he wanted to hold her, Sainabou screamed and said, "Oh you have broken my hand."

When the honorable Qadi had heard the disputants, he called upon his two witnesses to bear witness to his judgment. The Qadi ordered the wife to return to her husband after the witnesses had stated that her husband used to abuse her but cautioned the husband to refrain from abusing his wife. The Qadi had powers to stop the husband from abusing his wife and also had power to send someone to watch the husband. The Qadi relied on the statement in the Mukhtasar of Sheikh Khalil of page 147, which states "Where a woman is ill-treated by her husband, it is lawful for her to take him to the Qadi and if the Qadi is satisfied that the ill-treatment was proved, he the Qadi should prevent him from doing so and send someone to watch the husband

and prevent him from committing further ill-treatment and the marriage could continue.[2] But where the woman stated that, because of ill-treatment she wanted a release, such a wish should be granted; this also applies to the husband." However, two years after the marriage was resolved in court, the wife left her husband's house again allegedly due to continuous abuse. The husband, Draman Jallow went to the Qadi to seek for her to come back, but the Qadi ended up granting the wife a divorce as she did not want to return to her husband. However the Qadi ordered Sainabou Amar to return to her husband the dowry of $403 and 3s, relying on the statement of Sheikh Khalil on the chapter dealing with release in the words, "release is lawful and that is repudiation for a consideration."[3]

This long and contentious case, like most of the cases I investigated, illustrates the host of issues – polygamy, domestic violence, infidelity, social insecurity, property rights issues, and

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[2] Mukhtasar – legal treatises by a Maliki scholar of the fourteenth century. Mukhtasar of Sheikh Khalil is often regarded as the most advanced text in Maliki law. Much of *Mukhtasar* was translated into English in 1916, "by order of Sir F.D. Lugard," for the use of colonial officials in Northern Nigeria. Perhaps a copy of this book found its way to The Gambia after the establishment of the Muslim court. See Philip Ostien, *Sharia Implementation in Northern Nigeria*, 1999 – 2006. A Source Book, V. (Ibadan: Spectrum Books, 2007). It was most probable that Gambian Islamic scholars who studied abroad have had knowledge of the Mukhtasar of Sheik Khalil and many other legal treatises. For many centuries, Senegambian scholars studied abroad in renowned Islamic centers in North Africa and the Middle East. See for example, John Hunwick, "Sub-Saharan Africa and the Wider World of Islam: Historical and Contemporary Perspectives." *Journal of Religion in Africa,* 26, 3 (1966):232; Lamin Sanneh, *The Jahanke Muslim clerics: A religious and Historical Study of Islam in Senegambia* (Lanham, MD: University Press of America, 1976). Donald Wright, *The World and a Very Small Place in Africa: A History of Globalization in Niumi, The Gambia* (New York: M. E. Sharpe, 2004); Spencer J. Trimingham, *A History of Islam in West Africa* (London: Oxford University Press, 1962). Spencer J. Trimingham, *The Influence of Islam Upon Africa* (New York, Frederick A. Praeger Publishers, 1968).

[3] For a detailed description of this case, see the Muhammedan Court Records Book, 1906 – 1915 at the Muslim Court, Police Court grounds, Banjul, The Gambia. This book is not catalogued and therefore has no accession number. It can be found in the Chief Qadi's office in Banjul. All the cases in the book are dated and signed by the qadi and his assessors.

jealousy, that in one way or another complicate marriage and relationships in the multi-ethnic and multi-cultural community which Bathurst was in the early twentieth century. Furthermore, the story speaks to a number of social and cultural issues such as slavery and its legacies in the colonial city of Bathurst.[4] It shows that slavery was contentious and made marriages between former slaves and former masters problematic, if not impossible, even in present times. Today, it is still socially unacceptable for a marriage to happen between a person whose family was once a slave and a person whose family was free. Added to the issues of slavery was the problem of caste. In the story, Draman Jallow, the complainant's husband, vehemently rebuked and accused Sainabou of a relationship with slaves and goldsmiths.[5]

The story further tells about the lifestyles, living, and economic conditions in Bathurst, and by extension in the region. These can be gleaned from the types of materials and amount of dowry being paid for a wife at the time - the high rates of bride wealth in Bathurst at the time

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[4] The issue of slavery continued to affect settlement and marriage patterns in most part of Senegambia. It is an issue that needs to be studied. See Martin A. Klein, "The Concept of Honour and the Persistence of Servility in the Western Soudan (La notion d'honneur et la persistance de la servitude au Soudan occidental)," *Cahiers d'Études Africaines*, 45 (2005): 831-851; Andrew F. Clark, "The Challenges of Cross-Cultural Oral History: Collecting and Presenting Pulaar Traditions on Slavery from Bundu, Senegambia (West Africa)**,"** *The Oral History Review*, 20, 1/2, **(**Apr. 1, 1992**):** 1-21; Albert Aldo Benini, *Community development in a multi-ethnic society, the upper river division of the Gambia, West Africa: With minor comparative studies from Upper Volta and Benin* (Saarbrucken, Germany and Fort Lauderdale Fla., 1980).

[5] In Gambia, goldsmiths, black smiths, and silver smiths are characterized as a caste group together with griots. See chapter one. In any event, whether Draman's rage came out of jealousy or not, the story gives a hint about matrimonial issues in Bathurst at the time and reveals efforts by the husband to control the body of the wife or to control her sexuality. This aspect of control is seen by the husband's tirade towards the sexual conduct of the wife's family. For more information on caste, see Tamari Tal, "The Development of Caste System in West Africa," *The Journal of African History, 32, 2 (1991): 221-250;* D. M. Todd, "Caste in Africa? "Africa: Journal of the International African Institute, 47, 4 (1977): 435-440; Cornelia Panzacchi, "The Livelihoods of Traditional Griots in Modern Senegal," *Africa: Journal of the International African Institute*, 64, 2 (1994): 190-210.

could have made it more difficult for women to sue for divorce.[6] What makes divorce difficult even today is that if a woman initiates it, she has to return the dowry, the bride wealth that the husband paid at the time of marriage, and this is usually wealth already spent or consumed. In this case, the woman and her parents must find ways to refund the money. Jane Guyer notes that in most places, both British and French colonial legal practice increasingly favored marriage by bride wealth, which combined the features of marital stability and limiting women's ability to be 'capricious,' with male authority and with a clear inter-family public contract marking the relationship. Guyer further states that in all customary systems, bride wealth rights are heritable and realizable in the material sense, and also have fundamental implications for the legitimation and the intergenerational transfer of property.[7] Also, the woman must observe *idda*, (a three months waiting period) to find out whether she is pregnant or not. All of these issues complicate divorce in Muslim courts, especially where social relationships and societal needs are usually put into consideration before a judge decides on a case. This case and many of the cases I present here are detailed and provide particulars of social, cultural, and economic challenges faced by women and men in Bathurst during the early 1900s.

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[6] The court cases show that men were paying high bride wealth at the time, an amount that would be considered high even at present times. As the case between Sainabou Amah and her husband indicates, a bride wealth of $403 in 1907 was quite high. At present the daily wage of an average Gambian is less than a dollar.

[7] Jane Guyer, *Women and the State in Africa: Marriage Law, Inheritance, and Resettlement* (Boston, African Studies Center: Boston University, 1987), 4-5. See also Thomas Håkansson, *Bridewealth, Women, and Land: Social Change Among the Gusii of Kenya* (Uppsala: Almqvist & Wiksell International, 1988).

Overview: Matrimonial Issues in a Changing Colony

In 1905, when the Muslim Court was established in Bathurst, it found itself dealing with complex, contentious, and long court cases involving issues such as marriage, divorce, slavery, caste, polygamy, mistreatment, child custody, dowry (bride wealth), and maintenance. Scholarship on colonial rule tends to suggest that colonial officials, by patronizing Islam also aided in the suppression of women.[8] Though, such relations operated in many parts of Africa, here I contend that in the Gambia colony, the Muslim court under the supervision of Europeans gave opportunities to women to bring their cases to the court where they were able to receive favorable outcomes.[9] The records further demonstrate that women were not shy about bringing their domestic and even intimate sexual issues to the "public sphere'' (the courts) in a community that was predominantly Muslim. [10] In the early 1900s, women also went to the courts

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[8] For example, see Lucy Creevey, "Islam, Women, and the Role of the State in Senegal," *Journal of Religion in Africa,* 26, 3 (1996:Aug.): 268-307. Creevey suggests that the arrival of the French reinforced the downgrading of the position of women, p.276. Hamilton Sipho Simelane, "The State, Chiefs and the Control of Female Migration in Colonial Swaziland, c. 1930s-1950s," *The Journal of African History*, 45, 1, (2004): 103-124. For relations between colonial officials and African chiefs in suppressing women, see Elizabeth Schmidt, *Peasants, Traders, and Wives: Shona Women in the History of Zimbabwe*, *1870 – 1939* (James Currey: London, 1992); Elizabeth Schmidt, "Negotiated Spaces and Contested Terrain: Men, Women, and the Law in Colonial Zimbabwe, 1890-1939," *Journal of Southern African Studies*, 16, 4 (1990): 622-648; David M. Anderson, "Master and Servant in Colonial Kenya," *The Journal of African History*, 41, 3 (2000): 459 -485.

[9] For courts giving opportunities to women and men elsewhere in Africa during the early years of colonialism, see Richard Roberts, "Representation, Structure and Agency: Divorce in the French Soudan During the Early Twentieth Century," *Journal of African History,* 40 (1999): 389-410; Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912 (*Portsmouth, NH: Heinemann, 2005).

[10] For more detailed analyzes on "public sphere" see Jürgen Habermas, *The Structural transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Massachusetts: MIT Press, 1989), 24. Habermas notes that official intervention into the privatized household finally came to constitute the target of developing critical public sphere.

because the courts served as a site for conflict resolution and management and provided sanctuary where married women could find a level of protection from abusive husbands.

An examination of these cases reveals that the court provided opportunities for women to seek for some form of justice and fairness from their husbands and parents at a time when women were struggling to deal with male dominance and general patriarchal issues. Arguably, the courts also created conflicts within communities by women taking advantage of European liberty, where women would get support from the European courts rather than local rulers, elders, and or community members.

In this chapter, I explore cases which were brought before the Muslim Court. Through the numerous records produced by the court, I investigate the voices of women and men and discuss disputes that emerged and examine how these disputes were framed, explained, and resolved. This is necessary as it helps appreciate the variety, nature, and frequency of litigations dealt with by the Muslim Court. The Muslim court became a site where women would go to mend or get out of untenable marriages. The court also achieved a level of success in stopping abusive husbands from maltreating their wives because the court could rely on the tenets of Islam and allow women to get economic support from their husbands or inherit their parents' properties as ordained in Islamic law. These actions by the court were supported by the British colonial officials, who remained overseers of the court. The court contributed to reinforcing a minimum of fairness within Gambian households by challenging male patriarchy and ensuring that husbands treated their wives justly. It could be argued that these actions by the court in

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The private sphere co-exists with the public sphere, which includes public authority, such as the court.

supporting women's claims gave legitimacy to changes that were happening between men and women in the larger Gambian society during the early twentieth century.

Sources for this chapter came from the Muslim court records. The files of the Muslim Court records are still well preserved at the High Court in Banjul and at the Qadi Court premises in Banjul. The cases are in hand written transcriptions in English and Arabic, particularly those of the first ten years of the court, 1905-1916. However, in reviewing these documents, I was conscious of the limitations of documentary sources as noted in the introduction. Furthermore, in probing the colonial court records of Senegal, Richard Roberts cautioned historians to look not only into the testimonies and transcripts produced by these courts but to also look beyond them and delve into the societies in which they are produced. According to Roberts, litigation is about social relationships in crisis. Historians using court records must situate each individual crisis within the larger social history of those relationships and place them squarely in changing political economies. Also, the voices of litigants speak in ways which have been profoundly shaped by the procedures of the court and by the circumstances surrounding the transformation of testimony into text.[11] Hence, the oral history interviews I conducted substantiated and enriched the conclusions drawn from the court transcripts examined for this project. I asked the elders about cultural norms and values about marriage patterns and procedures that were customary at the time the court records examined here were generated.

Cases examined in this chapter allow historians to have an insight into not only the relations between men and women, but also as to what types of cases were brought before the colonial courts at the turn of the century. For example, did women take advantage of the new

[11] Richard Roberts, "Text and Testimony in the Tribunal de Première Instance, Dakar, during the Early Twentieth Century," *The Journal of African History*, 31, 3 (1990), 461.

options provided by the Europeans to escape old-age patriarchy or were they escaping to look for new economic and social opportunities provided by the Europeans' presence? Moreover, these cases also reveal a lot about marriage and divorce practices in the Islamic communities under study because the issues of slavery, caste, marriage, polygamy, mistreatment, child custody, dowry, and maintenance are relevant to proper functioning of Muslim societies. In addition to particulars about domestic strife, they provide evidence of how judges interpreted the law and the legal basis for their decisions. For instance, did the qadis rely on *sharia* or "customary" law to make judgments? It also reveals details about the educational background of the Qadi and his position as an influential member of the Muslim community. At times, such cases reveal the *tarikh* of the Qadis.[12] In effect, the courts (Muslim and "Native") could be seen as sites of competing interests, complex negotiations and compromises.

The establishment of the Muslim court in a way was part of some of the larger changes that were occurring in the broader Gambian society in the legal, economic, social and cultural spheres. As examined in the introduction and in chapter two, the introduction of colonial rule brought with it altering labor regimes which shifted emphasis from agricultural based economy to urban wage employment. Most of the migrants from rural areas to the city found themselves competing with each other and with earlier migrants either for the few of the salaried jobs the colonial government provided or over other types of unskilled jobs. Young people in particular bore the brunt as many of them left farming for the city. Though many of the women remained as house wives, some of them went into petty business at the market selling food, jewelry, and

[12] The two main *tarikhs* in the Senegambia are the Tijaniyyaa and Qadiriyya. The Qadiriyya and the Tijaniyya are two popular Islamic orders which gained currency among the Wolof during the eighteenth and nineteenth centuries respectively, as most local clerics embraced either one or the other.

other household items. These changes in livelihoods caused frictions among husbands and wives and parents and their children which impacted family and warranted some family members to go to the courts for settlement of disputes.

Socially and culturally, colonial presence hastened ending of the slave trade and slavery. As a result, many of the migrants to the city were former slaves seeking protection from their former masters or looking for wage employment. According to an informant, most of these former slaves were also landless in the villages that they came from and they found going to the city as an opportunity to begin a new life.[13] Early settlers came to Bathurst as a fragmented group and arrived in waves. Some groups came with European settlers from Senegal as slaves or servants and as technicians to build the new British colonial city. Others came as a result of the Muslim wars that ravaged the region for more than half a century. Some came as individual migrants in search of labor, colonial education, and other opportunities provided by the city. Hence, new cross-cultural marriages and new social relations were formed – marriages which were subjected to disagreements because of the social and cultural taboo in marriage between former slaves and former slave masters.

The new city also had very little to offer in terms of ethnic and kinship securities and the migrants found it necessary to form new alliances or groupings to survive changing social, economic, and political conditions in the urban space. These alliances were formed based on several factors such as ethnicity, place of origin and caste, economic and political interests. All the qadis profiled in chapter four were of the Wolof ethnic group. Though one of the most controversial issues over qadiship centered on place of origin, the crisis also showed features of

[13] Interview with Kebba Sambang (name anonymous), October, 2010, Salikenye, North Bank Division.

caste and contestations over political representations. One could say that belonging to Islam did not help in cementing the ties between Bathurst Muslims or help in suppressing their disagreements.[14]

The struggle of Muslims to carve out an economic space in the new colonial city further sharpened the divide between them. The new city presented new challenges to people of different cultural and social backgrounds to live together in a new political and economic reality – one which is ruled by Europeans with different religious beliefs. As Allan Christelow notes, the city could no longer be viewed simply in terms of communities, where magistrates played the key role in regulating relationships within and between groups. Rather it had now to be seen in terms of constituencies competing for the control of municipal institutions.[15] A good example of such a view was competitions between Bathurst Muslims over the control of qadiship, the Bathurst Mosque, and the Muhammadan School institutions, the control of which were cardinal in the creation and formation of not only Muslim identity but also Muslims participation in the economic and political life of the colonial city.

The legal developments impacted the conditions of women and marked changes in women's livelihood in two main ways. One is the urban context in which the court was located, and the other was the codification of the law. The location of the court in an urban context marked a shift from "customary" ways of adjudication and from "customary laws" to more

[14] See Deborah Pellow, "Muslim Segmentation: Cohesion and Divisiveness in Accra," *The Journal of Modern African Studies*, 23, 3 (Sep., 1985):419-444. For example, Pellow echoes that the differentiation among some Muslims in Ghana centered on the argument of legitimacy - to build a new mosque and to choose a new leader. For her this contestation is fuelled by the dyadic concept of ethnic group and ethnicity and regional identity.

[15] Allan Christelow, "The Muslim Judge and Municipal Politics in Colonial Algeria and Senegal," *Comparative Studies in Society and History*, 24, 1 (Jan., 1982), 4.

"formalized" ways of court hearings in institutions designed specifically for court matters. These new structures include written and codified laws with bureaucratic structures. "Traditionally," local courts would be held by village elders and clerics based on their knowledge of "traditions" and the Quran when Islam became widespread. The institutionalization of the court set it apart from the "traditional" ones in that the new court provided some level of assurances, not only for redress, but also means and opportunities for appeal. By this time, local structures were crumbling under colonial pressure together with increasing urbanization. Women used the presence of Europeans and lack of traditional judicial processes in the city to go to the courts. The presence of Europeans also gave an alternative authority to whom disputants could turn to in quarrels with one another. Gambians also responded to the courts because the courts resonated with forms of traditional conflict resolution strategies where "traditional" conflict resolution approaches is found in social institutions and individuals, which are considered as 'third party' (mediators). Traditional Gambian society has a tendency to perceive mediators as trustworthy, knowledgeable, and therefore impartial. Mediators often cite *hadiths* (sayings of the Prophet Mohammed) about how Muslims should be peaceful and should not dispute with each other. Gambians hold common beliefs about divine rewards for peaceful people and temporal punishment for those who dispute with others.[16] Quite often these strategies are based on proverbs and sayings. For example, an old Mandinka adage stresses that, *"hani ñiŋo ning neŋo I ka ňoo king ne"* (even one bites his or her own tongue). In a sense, this is to say that conflict must occur between people who live together. It is a fact of life and therefore becomes

[16] See Mark Davidheiser, "Special Affinities and Conflict Resolution: West African Social Institutions and Mediation," *Beyond Intractability: The Conflict Information Consortium* (University of Colorado, December 2005.

inevitable. The Wolof also says that, "*su jege doon taxa doon xarit, kon ndox du togg jën"* (if proximity is a measure of friendship, fish will not be boiled in water). These are based on the perceived notion that no matter what happens; communities continue to live together.

In addition to matrimonial issues, it is clear from the court records that during the early twentieth century, communities in The Gambia colony and protectorate were also dealing with material and other property rights issues, some of which were local (animals, jewelry, land), and some introduced by European colonialism (clothes, jewelry, and other trade materials). These issues frequently found their way into court rooms. Richard Roberts and William Worger's article throw light on some of these property rights issues which found their way into the courts in some parts of Africa.[17] With regards to codification, it made it possible for Europeans to keep their gaze on the activities of the court. In fact, during the early years of the court, particularly from 1906-1913, the British made sure every individual court ruling was translated into English in order to monitor the court's decisions.

In the early twentieth century, colonial administrators used the courts, whether Muslim or secular, to contain local communities partly by making it an avenue to diffuse tensions within these societies. In Muslim communities, Muslim judges were given responsibility for such tasks. As Allan Christelow has shown in northern Nigeria, the Muslim judges used *sharia* (Islamic religious law), and some indigenous practices such as "customs" or *ada* to administer justice. In addition to *Sharia*, judges also drew on several other sources of local legislation such as *hukm* – (the legislation of our time), and *radd al-mazalim* (the redressing of injustices), the latter a

[17] See Richard Roberts and William Worger, "Law, Colonialism, and Conflicts Over Property in Sub-Saharan Africa," *African Economic History*, 25 (1997): 1-7; Richard Roberts, "Conflicts over Property in the Middle Niger Valley at the Beginning of the Twentieth Century," *African Economic History*, 25 (1997): 79-96.

concept of Islamic secular tradition in which the ruler takes the role of setting right injustices committed by government officials.[18] This allows judges to respond to cases depending on the current social, political and economic context. An example of a court ruling from Kano's court, in *Thus Ruled Emir Abbas*, shows the application of *hukm* in the early 1910s:

> And also Ijaye, from the women of Gezewa, complained against her slave woman Halima. She said that she hit her. Ijaye summoned the slave woman. She did not deny this so she was imprisoned to punish her. She spent four days in the prison, and then she repented. The Emir rebuked her severely, then forgave her and released her. He placed her in the possession of Ijaye, on the basis of hukm.[19]

This paragraph further illustrates the day to day relationships between slaves and their masters. The testimony also reveals struggles among women, elites, and less privileged people. It also emphasizes the position and power of the Qadi to dispense justice according to Islamic law.

The example above, like court transcripts from the Muslim court of Bathurst, shows how the court allowed litigants to explain their reasons for seeking redress, and is a further window into the problems and frictions in society at that time. An important reason that litigants went to the courts was the freedom they (mainly women) had in expressing themselves before these formalized courts. This opportunity was not available to them in "traditional" courts, which were in existence before the setting up of colonial courts. In many "traditional" African societies, women, and young people in particular, had the greatest difficulties in making their voices heard due to the patriarchal society of the time. In fact, Richard Robert points out that the new colonial

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[18] See Allan Christelow, ed., *Thus Ruled Emir Abbas: Selected Cases from the Records of the Emir of Kano's Judicial Council* (East Lansing: Michigan State University Press, 1994). Though *Hukm* is a form of custom, it can also mean different things at different times. Custom implies a repeated rule and *Hukm* implies a rule instituted from above by executive authority. It should be mentioned that the usage of these rubrics is not consistent. Therefore, similar cases could be classified under different rubrics.

[19] Christelow, 1994, 133.

legal system created opportunities for men and women with both old and new grievances to bring them forward in ways which they might not have been able to in the pre-colonial period.[20] Allan Christelow notes that "the choices and strategies of litigants and the existence of potential alternative sources of judicial authority in the form of the qadi's court, the British administration, and the British courts all had influences in shaping legal realities."[21] As such, women in bondage and women with matrimonial problems went to the courts whenever the opportunities presented themselves, challenging pre-existing legal structures and influencing decisions in court, especially those relating to divorce and property rights issues.

For instance, during the first five years of its existence, the court dealt with several cases.

Table 1: Frequency and Type of Cases Brought Before the Muslim Court, 1906 - 1910

Year	Frequency of cases	Brought by a Woman	Brought by a man	Type of case
1906	3	2	1	2 divorce settlement 1 domestic abuse
1907	14	12	2	3 domestic abuse/neglect 5 divorce settlement 3 child custody issues 2 maintenance/support issues 1 slavery case
1908	17	11	6	8 divorce settlement 2 domestic abuse 1 child custody issue 6 maintenance/support issues
1909	18	13	5	2 domestic abuse, 1 brought by a man 9 divorce settlement 1 betrothal case 6 maintenance/support issue
1910	16	11	5	4 domestic abuse/neglect 1 inheritance issue 3 Maintenance/support issue 8 divorce settlement

20 See Roberts, 1999.

21 Christelow, 1994, 10.

Though a large number of these cases were brought by women, an impressive number was also brought by men, including one case of domestic abuse. "Traditionally," such a case even today would generate resentment and repudiation from the male population. Men who get beaten by their wives, even today, are usually ridiculed and scorned by the public because they are seen as weak and powerless. The majority of the cases sampled above were divorce settlements – cases brought by women or men to attempt to amicably resolve tensions and frictions in marriages or release themselves from untenable marriages. These types of problems could include frictions between co-wives and children of the wives. Problems could also arise as a result of jealousy or husbands being unfaithful. Also common were maintenance or support cases for the wife and children. In the colonial city of Bathurst, the mounting economic and social pressures also added to frictions within families as the populations struggled for the few available jobs the city had to offer. Men would also run away from their wives or disappear for long periods of time. Women would go to the court to complain about the husband's failure to clothe, feed, and house them and their children. Domestic abuse was also an issue common in the records. Even today, domestic abuse is common as a result of general patriarchal issues.

Women Seeking Divorce: Problems of Interpretation

The Muslim court transcripts of Bathurst reveal that matrimonial issues were contentious and women were concerned either to resolve them or to get out of untenable marriages. In colonial Gambia, colonial officials provided two avenues to resolve marriage issues. In the colony (Bathurst), a Muslim court was established while "native" courts operated in the protectorate. Though the British provided these opportunities, they left the running of these

institutions in the hands of local leaders and clerics who were the "traditional" rulers. This could be partly due to the fact that the colonial officials were thin on the ground and had very little knowledge about customary and Islamic laws. In fact, up to the 1950s, the British officials in Bathurst were struggling with issues of how to interpret Islamic law in these courts.[22]

For example, in a letter from the Commissioner, Upper River Division (URD), to Sergeant Trove Jones, Senior Commissioner of Bathurst, Commissioner URD discussed his difficulty in resolving a case involving a woman who obtained a divorce in a local tribunal on the grounds of maltreatment. A few days after the divorce was granted to the woman, she voluntarily returned to the man and lived with him for two years, during which time they were not officially remarried. After sometime, the woman ran away to another person's compound and refused to have any affair with the first man. The man wanted the woman back, or if not, he wished to sue for divorce and return of dowry which was not refunded at the time of the earlier divorce. The woman contended that "she was free to do as she likes as she had never been remarried and she had several witnesses who deposed that the man had no claim over the woman as there has been no remarriage and that for the last two years she and the man had merely been living together."[23]

The man disagreed, relying on learned teachers who informed him that in Islamic law, "if a woman is divorced with the fault on the husband's side – and if the woman voluntarily reconciled to the husband within three months of the divorce and goes to live with him, the

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[22] See Barbara M. Cooper, *Marriage in Maradi: Gender and Culture in a Hausa Society in Niger*, *1900 – 1989* (Portsmouth, NH: Heinemann, 1997), x1v.This ambivalence could be what Cooper characterized as Niger's colonial and postcolonial state's ginger attempts to legislate marriage reforms for fear of provoking large scale social and economic disruption. Despite legal structures put in place, French legislation and the formal court system never effectively supplanted indigenous courts for arbitrating disputes in Maradi.

[23] NRS, Native Authority (NA/26), Bathurst, 1951. Letter from Commissioner Upper River Division to Senior Commissioner,

marriage is thereby mended and they are once more truly man and wife without going through any further ceremony as enshrined in suratul Nissa – the sura concerning women."[24] This case illustrates that the problem of interpretation was challenging and at times opinions were sought from Muslims in other parts of the region. In January, 1952, the court in the Western Division had to seek answers to issues of dowry and divorce from Amir in charge of Ahmadiyya Movement in Sierra Leone.[25]

As a result of these complications, some government officials have long been in favor of the Qadi of Bathurst traveling around the country to interpret the Muslim law to the people.[26] However, some senior officers, such as A.C. Spurling, Attorney General, expressed concern that "the Muslim law administered in a 'Native' Tribunal must be the law as it resides in the breast of local pundits, so long as it is not repugnant to justice and morality, which of course Muslim law, except in some of its criminal punishments, is not."[27] Spurling reasons that the law practiced in Bathurst should not be the same in the protectorate because to him "the Muslim law is so much entangled with developing 'native' custom that it varies on minor points and sometimes on greater ones from district to district."[28] These examples show that different opinions existed

[24] NRS, NA/26, Bathurst, 1951. Letter from Commissioner Upper River Division to Senior Commissioner,

[25] NRS, NA/26. Letter from Commissioner, Bathurst to the Amir of Ahmadiyya Movement, Sierra Leone. The Ahmadiyya Movement is a nineteenth century Islamic movement founded in India.

[26] NRS, NA/26, May, 15th 1952. See letter from Sgd. G. Humphrey Smith to E. F. Small.

[27] NRS, NA/26, 25th September 1952Letter. A.C.Spurling to Snr. Commissioner, Humphrey Smith.

[28] NRS, NA/26, Letter, September 25, 1952. A.C.Spurling to Snr. Commissioner, Humphrey Smith.

among colonial officials as to how Muslim law was to be interpreted especially in the colony and protectorate.

Maltreatment, Property Rights, and Disappearing Husbands

Despite these interpretative difficulties, women have long frequented the courts to take advantage of the European presence and legal innovations. When the court was established in 1905, women went there mainly for matrimonial issues such as divorce, failure of marital duties, maltreatment and/or domestic violence, or lack of maintenance, factors which warrant divorce in Islam. However, the court records under review do not provide information on how some of these marriages were arranged and coordinated between the men and women who frequented the courts, yet understanding of these pre-marital arrangements is important because it is the problems encountered in marriage which ultimately drive one or the other of married partners to the courts.[29] The subject of marriage has already been much discussed by anthropologists, but it is important to mention here that perhaps the way in which some of the marriages in early 20th century Gambia were arranged lead to arguments between the couples. In the Senegambia, a final decision on a "traditional" marriage arrangement is usually made by parents. On many occasions, the couples would not be familiar with one another – no courtship would take place between the two members of a future couple. These pre-conjugal arrangements usually involved immediate parents and distant kin groups, and not the future couple at all. It is possible that a man would have to do several years of labor for the prospective wife's father, helping him on the

[29] For information on marriage practices, see Luigi M. Solivetti, "Family, Marriage and Divorce in a Hausa Community: A Sociological Model, Africa, " *Journal of the International African Institute*, 64, 2 (1994): 252-271; Alma Gottlieb, "Cousin Marriage, Birth Order and Gender: Alliance Models Among the Beng of Ivory Coast," *Man,* New Series, 21, 4 (Dec., 1986): 697-722.

farm or mending fences, or pay dowry or bride wealth in kind or cash before a marriage could take place. Among some groups such as the Fulani, Wolof, and Mandinka, marriage arrangements could take several years before the intended girl reach the age of marriage. It was also the husband's responsibility to find ways and means of maintenance of the family as Barbara Gallaway indicates, "a man has not only moral but legal responsibility for the support of his family. The remedy for a non-support for a woman is divorce, which is granted by an Islamic court and generally is not difficult to get."[30] Therefore, marriage arrangements could be an expensive enterprise so that when the question of dowry arises, it complicates the issue of divorce even today.

It is also important to state that as people moved to Bathurst, all with different cultural and social backgrounds, issues of marriage became more complicated. In this new multicultural community, strangers could meet and consummate marriage without parental guidance. Caste groups and freeborns who could not have been "traditionally" married in villages could consummate marriage in Bathurst with less censorship. Also, in the city, marriage could be formalized by some Muslim elders or clerics as they would probably be less conservative. Besides, potential suitors would not undergo all of the "traditional" rituals required for a marriage to be endorsed and blessed by the parents and the extended kin group. This freedom created a situation in which marital problems could be compounded by the absence of "traditional support mechanisms" – where family members, elderly women and men, and village elders intervened in marriage disputes to solve them before they reached the formal or European established courts. For example, during the interviews with elders of the villages of my study

[30] Barbara Gallaway, *Muslim Hausa Women in Nigeria: Tradition and Change* (Syracuse: Syracuse University Press, 1987), 39.

area, most informants indicated that whether in colonial days or nowadays, they hardly take their quarrels to the formal courts, especially matrimonial issues. They always endeavor to manage and resolve the quarrels at the village level.[31] Lack of these support mechanisms in Bathurst, combined with issues of colonialism and a growing sense of job insecurity, made marriages difficult, and at times men and women found it hard to remain in untenable marriages.[32] In particular, as women also took advantage of the few economic opportunities offered by the colonial city (petty trading and office jobs), they became vulnerable to general male patriarchy (jealousy and wife control). In this way, women went to the court because it served as arbitrator between Muslims. A fascinating case that illuminates male patriarchy and shows some of the problems women faced in Bathurst was a man who alleged that his wife was being mischievous and brought the case before the Qadi of Bathurst, but the woman used the occasion to inform the court of her husband's maltreatment towards her.

According to the particulars of the case, on September 24, 1908, Ebrima Jallow took the oath against his wife Hoorajjah Nyass, "My wife Hoorajjah Nyass showed me malice and continued with it for one year and refused to approach me. I did nothing to her to cause that. This is my case."

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[31] Interview with Sheikh Seediya Dabo, the grand marabout and Yusuf Dabo at Medina Seedia; At Fass Saho, with Seringe Mamamt Saho, and Bubakar Saho; at Medina Seringe Mass with Alhaji Badou Sallah, Imam Mbye Kah, Kebba Njie and Oustass Cherno Kah, November, 23rd 2010.

[32] In present day Senegal, the situation is not much different where absence of support from extended kin groups could increase the chances of domestic violence. See Codou Bop, "I killed Her Because She Disobeyed me in Wearing this New Hairstyle: Gender-Based Violence, Laws, and Impunity in Senegal," in *Domestic violence and the law in colonial and postcolonial Africa*, ed. Emily Burrill, Richard Roberts, and Elizabeth Thornberry (Athens: Ohio University Press, 2010), 203-219.

Jallow's wife, Hoorijjah in her defense took the oath and said:

> My husband used to beat me and tie me, before going to work he used to lock me inside the house until his return, he used to take a stick and put it inside my private parts. I ran and went to my father's house, he came and met me there and flogged me and my mother and shaved my hair with a knife and threatened to kill me. He also said he preferred to remain alone. This is my case.

The Qadi then advised Horrijjah to get two witnesses to support her statement giving her duration of five days. On the expiration of the date to produce witnesses, she came to the court without witnesses. The Qadi in the presence of his two witnesses ordered Hoorajjah Nyass to give her husband the amount of dowry she had received ($68), telling the wife that no one had heard that she was ever molested by her husband, relying on the Mukhtasar of Sheikh Khalil in the chapter which says, "release is lawful."

Hoorajjah was unable to pay the whole amount of dowry and was allowed to pay by installment (one cow value $15 and one silver anklet value $17, 3/3 and two silver bangles valued $13, /6 and $20); it took her almost a year to complete payment.[33]

Besides the detailed nature of this case, a lot can be learned from it with regards to the situation of marriages in Bathurst. It tells a lot about domestic violence and the complicated nature of relationships between women and men, and how women remained in marriages even when they reported constant abuses. While the husband had three witnesses supporting his statement on the amount of dower he paid, Hoorijjah's failure to provide witnesses for the alleged abuse led her to pay the dowry, but she was accorded divorce because of the mistreatment she claimed.

[33] For more information on this case, see the Muhammedan Court Record Book, 1906-1913, Banjul Muslim Court.

In her work on the Muslim tribunal of Ndar, Senegal, Ghislaine Lydon notes that for the most part, women could rarely produce witnesses to testify to their husband's violent behavior because physical abuse was typically carried out beyond public purview.[34] Why was it not possible for Hoorijjah to provide witnesses in a case that involved such domestic violence? Does the failure of witnesses to show up in court tell anything about social relations in Bathurst at the time, or about whether Hoorijjah was telling the truth about the ill-treatment? Does the case also say anything about the relationship between the court and the public? In the Gambia, there exists a general resentment at people who take their cases to the courts without first resorting to religious and local leaders. This is even more so for those living in clerical villages – a village established by a cleric devoted to teaching of the Quran.[35] The colonial courts could also be places where conflicts were created, or more generally as instruments which produced conflicts within communities, where people who normally accepted adjudications from local and religious leaders would now take their cases to the new colonial courts.

The case further reveals impulses of life in the colonial city of Bathurst especially the relations between men and women. In this case, while the husband said little about the nature of the problem between him and his wife, Hoorijjah provided details of ill-treatment in the hands of her husband, yet no witness came forward to support her statement. These cases show that women in Bathurst had to overcome many social stigmas to take a case to the court. The

[34] See Ghislaine Lydon, "Obtaining Freedom at the Muslims' Tribunal: Colonial Kadijustiz and Women's Divorce Litigation in Ndar (Senegal)" in *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies And Post-Colonial Challenges*, ed. Shamil Jeppie, Ebrahim Moosa, & Richard Roberts (Amsterdam: Amsterdam University Press, 2010).

[35] Interviews with elders at Medina Sedia, Sheikh Seediya Dabo, the grand marabout and Yusuf Dabo. At Fass Saho, with Seringe Mamamt Saho, andBbubakar Saho, at Medina Seringe Mass with Alhaji Badou Sallah, Imam Mbye Kah, Kebba Njie and Oustass cherno kah. November, 23rd 2010.

disadvantaged social position of women could have resulted in others being nervous to come forward and support a woman in her claims against her husband. Further, the private nature of domestic abuse, even today, can make it difficult to provide "eye witness" accounts. "Traditionally," women are supposed to be subservient, obedient and faithful to men.[36] Arguably, these male conceptions of society and perception of women could be seen as controlling factors of women's sexuality and freedom. Thus, producing witnesses may create a burden of proof for a woman that is unfeasible in most cases, certainly 100 years ago, but also today. In this way, the law, even as "applied equally" may be inherently discriminatory.

Historically, African women faced many challenges in patriarchal societies. At times, religion is used to define women's position in society. For instance, Amira Mashhour, in her work on parts of Northern Africa, notes that "Although women's rights in non-Muslim societies are not totally fulfilled, oppression of women's rights in Muslim societies is unique in that it is primarily done in the name of Islam. These communities claim that certain discriminatory practices are congruent with *Sharia* law and that their personal status laws, for instance, are based on Sharia law. By doing so, Muslim societies create a sacred justification for any

[36] Among many of the communities in The Gambia, legendary epics and songs popularize and valorize women who are obedient to their husbands. For example, one of Gambia's late Kora maestro, Lalo Kebba Drammeh has a powerful song in Mandinka that urges women to be obedient to their husbands, "*Musu soŋ bali te kanda wuluu la*," (a disobedient woman will not give birth to a prosperous child). Likewise, the Wolof also has similar adages that admonish women to be hardworking and faithful to their husbands, "*Ligaay yaay, agni doom,"* (mother's hard work benefits the child – in the physical and spiritual sense). These examples refer to a hardworking and a respectful woman, because a woman who engages in sex outside of marriage always bears children who end up in failure (This is repetitive – is this a statement of fact?). In fact, recently, a court in The Gambia ordered a woman to be hanged for infanticide. In her testimony, the woman complained that the reason why she dumped her baby into a well was that she was afraid her father would kill her if he learned that she was pregnant out of wedlock. For this story, see the Daily Observer, October 25, 2011.

discrimination or inequality already in existence or that could be stipulated in the future."[37] Such concepts and practices could have influenced judges' decisions, especially those judges who had been trained in the "traditional" *dara* (school), and could also have had an impact on how women were viewed in the courts.

In a similar divorce case, in November 1910, Gaye Njie of Bathurst took oath and complained of her husband's ill-treatment towards her by depriving her of marriage rights; inadequate support and neglecting to sleep with her whenever it was her turn. Whenever she questioned her husband, he would give the excuse that he did not refuse to fulfill his obligations, but when her turn was due, he always fell impotent. Gaye complained that she withstood the ill-treatment for eighteen months before coming to court. After that period of time, together with her five children, she went home to her parents for three months. She came to court to request either to reconcile with him and require him to give her all due respect and better treatment or to divorce her.

Alieu Njie, the husband, said the allegations made against him were all true. The reason for him doing so was that whenever it was his turn to sleep with Gaye, "if I approached her she would use bad language towards me, saying you have come again with your stench, you have come from your filthy women. Whenever she used these expressions I used to be disgusted with her and did not care for her again. But now my anger is over and my desire is to take her back into my house, and give her all the necessities, if it pleases God."

When they returned on the 17th November, Gaye Njie told the Qadi "I am now willing to go back to my husband on the condition he takes a new residence and not where I had originally

[37] Amira Mashhour, "Islamic Law and Gender Equality - Could There be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt," *Human Rights Quarterly,* 27, 2 (2005), 563-564.

been with him on account of the ill-treatment which I had borne from him and that of his other women with whom I had been living together." However, the husband Alieu Njie said he would not be able to carry out the condition and requested that the marriage be dissolved. The Qadi, relied on the authority of Mukhtasar of Khalil, page 146, which says, "a woman can undertake to release herself on the ground that she had been molested without even having any witness."[38]

This case also reveals issues of polygamy, maltreatment (inadequate support), and denial of marriage rights. Gaye Njie was able to get a divorce despite her husband contradicting her reports and without witnesses to her allegations after the husband showed his unwillingness to provide for her a separate accommodation. Though she got the divorce, what the records did not show was the issue of the five children and how they would be supported. The children would be living with the woman. It can be said that in general, women wore the brunt of the marriage during this period. Polygamy is an issue that features frequently in the records where a woman had problems with her co-wives. Kathryn F. Mason shows that relations between co-wives, especially those between women who have no role in choosing who is to become a co-wife, are characterized by jealousy, hostility, and attempts to escape the polygamous arrangement.[39]

Some of the complaints for divorce during the early twentieth century were the issues of disappearing husbands and lack of maintenance for wives. Some scholars argue that the

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[38] For details of this case, see the Muhammedan Court Book, 1906 – 1913, Banjul Muslim Court.

[39] For relations and problems between co-wives, see Kathryn F. Mason**, "**Co-Wife Relationships Can be Amicable as Well as Conflictual: The Case of the Moose of Burkina Faso**,"** *Canadian Journal of African Studies*, 22, 3 **(**1988**):** 615-624**;** Sangeetha Madhavan and Caroline H. Bledsoe, "The Compound as a Locus of Fertility Management: The Case of the Gambia," *Culture, Health & Sexuality*, 3, 4 (Oct. - Dec., 2001): 451-468; David W. Ames, "The Economic Base of Wolof Polygyny," *Southwestern Journal of Anthropology*, 11, 4 (Winter, 1955): 391-403; Michel Garenne and Etienne van de Walle, "Polygyny and Fertility Among the Sereer of Senegal," *Population Studies*, 43, 2 (Jul., 1989): 267-283.

disruption of African families in the early twentieth century was due largely to the imposition of colonialism and the introduction of colonial rule.[40] Scholars also maintain that colonial rule created a growing demand for labor and building of infrastructure and these had adverse effects on family structures as men moved in search of labor for years without or before returning to their families. These issues include the disintegration of kin groups and families where some family members had to migrate to the colonial city to look for paid work. Also people had to move because of lack of social amenities, health facilities, and schools in the protectorate. These population movements resulted in a spiraling rural-urban drift. Also, some issues also include the changes in the definitions of rights that are a part of the need to respond to the pressures of taxation, cash cropping, and urban and rural wage labor employment. The colonial system introduced taxes and taxes could only be paid in cash forcing hundreds if not thousands of young to come down to the Gambia River valley to grow groundnuts/peanuts. The payment of taxes in cash also catalyzed rural-urban migration. According to Richard Roberts and Suzanne Miers, colonial rule created a growing demand for labor for porterage, for building infrastructure, and for producing food for the burgeoning administrative centers.[41] Martin Chanock also argues that the imposition of colonial rule was the catalyst for several structural changes, one in which new tensions and conflicts were caused by new demands being made on old relationships or caused by the formation of new relationships which people tried to regulate with concepts and claims

[40] See Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985). Roberts, 2005.

[41] Richard Roberts and Suzanne Miers, *The End of Slavery in Africa* (Madison: University of Wisconsin Press, 1988), 20.

appropriate to a passing social formation.[42] In fact, as described below, the court transcripts are replete with cases involving women seeking maintenance from disappearing husbands that could be attributed to issues of changes in identity, individuation, the weakening of marriage bonds and new demands for labor. In Gambia as elsewhere in Africa, women bore the burden of family and would sometimes go the courts to sue for maintenance or divorce from vanishing husbands.[43] Men disappearing from their families were so common in The Gambia that J.K. McCallum, Traveling Commissioner for MacCarthy Island Province reported that "as regards the marriages it is not to be taken that they are unsatisfactory, for it is a common occurrence for the husband to go away for months without leaving any support for his family. I have known cases of this kind where the husband has been away for two years, and more, and whereabouts unknown."[44] What needs to be clear is that by this time, it was the responsibility of the married man to pay dowry to the woman's parents. Payment for the dower by this time had also been monetized. Men found it necessary to escape family and other social pressures to find money, as is shown in the story

[42] Chanock, 1985, 22.

[43] In many parts of colonial Africa, migrant labor was instrumental in disintegrating African families especially in Southern Africa where men went to work in the mines and women were left home to take care of children. Some scholars have written extensively on how South African families were fragmented and emotionally distressed by male members of families staying away for most parts of the year. For example see Peter Magubane, *Women of South Africa: Their Fight For Freedom* (Boston: little Brown, 1993); Meer, Fatima, *Women in the Apartheid Society* (New York: United Nations Centre Against Apartheid, 1985); Nomboniso Gasa ed., *Women in South African History* (Cape Town, HSRC Press, 2007); Helen Scanlon, *Representation and Reality: portraits of Women's Lives in the Western Cape,* 1948 – 1976 (Cape Town: HSRC Press, 2007); Wells, Julia, C., *We now Demand!: The History of Women's Resistance to Pass Laws in South Africa* (Johannesburg: Witwatersrand University Press, 1993); Dunbar Moodie, *Going for gold: men, mines, and migration (*Berkeley: University of California Press, 1994); Harries, Patrick, *Work, Culture, & Identity: Migrant Laborers in Mozambique and South Africa, c.1860-1910,* (Heinemann, 1994); Belinda Bozzoli, *Women of Phokeng: Consciousness, Life Strategy, and Migrancy in South Africa, 1900-1983* (Heinemann, 1991).

[44] NRS, ARP 30/4, 1914, The Travelling Commissioner Report MacCarthy Island Province.

above. To a large extent, the introduction of groundnut production in 1843 brought about waves of seasonal migrant laborers known as "strange farmers" from other parts of West Africa to the Gambia River Valley or within the Gambia – from one region to another. Some of these laborers would stay for years depending on how quick they could gather enough money before going back to their families.[45] Philip Curtin also describes them as the "first of the free 'strange or migrant farmers,' who as far back as 1780s and probably earlier still, a few inland farmers from countries like Bondu would go down to the Gambia for a period of farming near salt water markets."[46]

Some of these unprecedented economic and social changes had far reaching consequences on the local populations particularly, within the household. Women whose husbands disappeared for long periods of time without any maintenance would go to the Qadi court to ask for divorce or sustenance from the husband. For example, On February 13, 1906, Yama Touray appeared before the Qadi and complained about the failure of her husband to maintain and clothe her and their child. The husband disappeared immediately after the birth of the child without any source of maintenance until the child reached weaning age.

The Qadi asked her to wait for a month, relying on the statement of the Qadi Abubakar Muhammed ben Assem, author of Johfat al-Hukkum, in the section dealing with repudiation on

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[45] In The Gambia, among Muslims, marriage could be consummated even if bride wealth is not paid in full. For more on migrant workers (strange farmers) and groundnut production, see Kenneth Swindell, *The Strange Farmers of the Gambia: a Study in the Redistribution of African Population* (Norwich: Geo Books, 1981). See also, Assan Sarr, "Land and historical changes in a river valley: property, power and dependency in the lower Gambia basin, nineteenth and early twentieth centuries," (PhD Dissertation, Department of History, Michigan State University, 2010).

[46] Philip Curtin, *Economic Change in Pre-Colonial Africa: Senegambia in the Era of the Slave Trade* (Madison: University of Wisconsin Press, 1975), 231.

the ground of failure to provide maintenance in the verses: "And the wife of the absent, when she is with child, her husband being absent for a month, will wait for a month, and on the expiry of that period, repudiation will take place on her taking the oath and in case she so chose." After a month, the husband's whereabouts was not known and the Qadi gave the choice to Yama of waiting for her husband or repudiation. She chose repudiation and to remain without husband until she had passed three courses of menstruation (iddah).[47] The disappearance of Yama's husband further illustrates the problems women encountered in the colonial city of Bathurst. Was Yama's husband a stranger in Bathurst who left another wife and children elsewhere and came to the city to find some money and in the interim married Yama? Did he simply run away to find some money, and still has not made enough to return?

Also, some of the problems in the growing city of Bathurst included property rights issues which the courts had to deal with. For example, on July 18, 1906, in a property rights case, Mariama Koita came before the Qadi and informed the court that she and her husband Momodou Jobe gave her father Dooa Jabi $52, two bulls, and a cow for safe-keeping. While they were away, Mariama's father died. According to Mariama, she asked her mother about the things she and her husband gave to Dooa Jabi to keep. Her mother said she only saw two bulls and a cow and a calf and that the calf was born when Mariama and her husband were away but the cow was stolen. Mariama's mother also denied having seen the $52 in question. Mariama also informed the court that her mother had prevented her from getting the house that her father had given to her.

[47] Further details of this case can be found in the Muhammedan Court Record Book, 1906 – 1919, Banjul Muslim Court.

In her defense, Binta Ann told the Qadi when her husband, Dooa Jabi, died, all she saw were two bulls, a calf, and a cow and $10. She further said that the cow had been stolen and she sold the calf and bought another cow. She also stated that she informed the police at the time the cow was stolen. The honorable Qadi then asked her for the money that Momodou Jobe and his wife gave to Dooa Jabi. Binta replied that Momodou did not give her $52 nor did she receive it. Thereafter the honorable Qadi asked Binta Ann whether Dooa Jabi before his death had given any instructions with regard to his affairs after death. She replied in the negative.

While one witness for Mariama Koita said on oath that Dooa Jabi had with him the cows and money up to the time he died and did not tell anyone about them before his death, two other witnesses said on oath that they knew that Dooa Jabi had given Mariama Koita a compound as a mark of gratitude and for her obedience that she had mastered the Quran by heart and she had known a bit of English. Witnesses for Binta Ann also testified on oath that they saw the cows but knew nothing about the money. When the honorable Qadi had heard the statements of the disputants, he called on Binta Ann to pay for the two cows relying on the words of Mukhtasaz of Khalil in the section dealing on deposits that discuss the situation "where one died without making a will and none of his property is seen to."

This case illustrates not only the importance of property rights issues but the issue of marriage itself. Was it was possible that the father recognized the marriage between Mariama Koita and Momodou Jobe, but the mother did not appreciate the marriage? Did this case involve religious issues important for marriage? Why did the father, Dooa Jabi left a compound for Mariama to inherit as a result of her "knowing the Quran and English." Perhaps, this case also illustrate about the complexities of marriage regarding who could be married to whom.

During this period, it was also possible that people belonging to different ethnic groups or religions would marry and have children and property. Usually, problems of inheritance would occur particularly after the death of one of the partners or if the other partner wanted to switch back to his or her original religion.[48] For example, on January 16, 1906, Samba Seck of Bathurst brought before the Qadi a custody case against Hannah Gomez. Samba testified that his brother Cherno Mboob had married Hannah Gomez and Cherno died leaving a daughter. Samba complained that Hannah did not raise the girl but gave the custody of the little girl to another woman who was not biologically related to her or the husband. Samba further complained that the child was not being brought up according to her father's religion and as a result, the child drank wine and ate pork.

After the Qadi interrogated Hannah Gomez, she admitted what had been said by the child's uncle but stated that she would take the child from the woman in whose custody it was and take the responsibility of raising her from thence onwards. Thereupon, the Qadi gave judgment against Hannah Gomez that it should be her obligation to raise the child and not the uncle or anyone else, relying for this purpose on the statement of the Sheikh Khalil in the section dealing with custody of children "and it remains if there is a danger to a Muslim."[49]

This case is significant in illuminating social relations in Bathurst and the role of the Muslim court in the colonial city in adjudicating between the city's residents no matter their

[48] In Islam, for a Muslim to marry a non-Muslim, he or she must be converted to Islam.

[49] For more information on this case, see Muhammedan Court Records Book, 1906 – 1919, Banjul Muslim Court.

religious affiliations.[50] Here, we see a Christian woman taken to a Muslim court by her brother-in-law for not raising her child according to the religious standards of her deceased husband. This says not only something about interpretive difficulties in the Muslim courts but also about how people in broader society recognized legitimate claims of identity. From this case, it can be seen that Cherno Mboob was probably Wolof and Muslim, and his wife Hannah Gomez, a Manjako or Aku and Christian, issues which could complicate marriage. It was also possible that Cherno's family never approved of the marriage from the beginning because of the religious differences and therefore used the law to attempt to take the child from Hannah Gomez.

Another example of a custody case that illuminates the particularities of the law was the case involving Sasoon Cham and Sainey Bojang. Sainiey and Sasoon's daughter Mam Sainey Cham married and begot a child called Jatton Bojang. After divorce, the child lived with the grandmother for 15 years during which she fed and clothed her. One day, Jatton visited her father in a village outside of Bathurst, and her father allegedly refused to let her go back to her grandmother.

The grandmother went to the Qadi to have her granddaughter returned. The Qadi ordered the girl returned. The Qadi ordered the defendant to return Jatton Bojang to her grandmother relying on the authority of four steps in Muslim jurisprudence, Page 45: "A woman repudiated by her husband is entitled to the custody of her child till it attains puberty in the case of a boy or in the case of a girl till her marriage by consummation."[51] However, this case on appeal was

[50] The contradiction though is that the primary reason for demanding the establishment of the Muslim court was that Muslims wanted little to do with the European courts, which they saw as Christian.

[51] See the Muhammedan Court Record Book, 1906 – 1919, Banjul Muslim Court.

heard in the supreme court of Bathurst and the judgment of the Qadi was reversed.[52] This case is important because it shows two legal systems at work - the *sharia* and the English law. The case further shows difficulties in the interpretation of *sharia* and how the European law sometimes superimposed the Islamic law.

Some of the factors that complicate child custody in courts are issues of "child labor" and cultural or "customary" claims to children. In many parts of Africa, children or minors remained important labor reserved especially in agricultural communities. For example, in Kabba, Nigeria, "the concept 'ties of blood' served as a focal point for reinterpreting the respective claims of Bunu Yoruba women and men to children after divorce. Beliefs about how these blood ties were constituted not only differed between the British and Nigerians, they were reinterpreted differently over time by Nigerian women and men…With the introduction of divorce and the child custody rule, men could claim children on the basis of a single bride wealth payment."[53] In other places such as parts of Ghana, a father has the right of use over his children, but the true ownership is vested in their maternal grandmother.[54] In the Gambia, among the majority of the ethnic groups, the father retains the rights of custody to the child because of issues of consanguinity. Among the Mandinka, sometimes the male child can go to live with his mother's brother – *bariŋlaa* – during which period the uncle would benefit from the child's labor.

[52] It would be interesting to know why the supreme court of Bathurst overturned the decision of the Muslim court which seemed to give a more favorable ruling the woman.

[53] Elisha P. Renne, "P*olyphony in the Courts: Child Custody Cases in Kabba District Court, 1925-1979,"* Ethnology, 31, 3 (July 1992), 219 – 220.

[54] Jean Allman, "Fathering, Mothering and Making Sense of "ntamoba:" Reflections on the Economy of Child-Rearing in Colonial Asante," *Africa*, 67, 2 (1997): 296-321.

However, in all matters of custodian issues, the father's decision is paramount and has the ultimate authority over his child.

In fact, one of the ways to enhance understanding of these court records and women's voices in the courts is to look at how issues of marriage in African societies and women's position within the household were and are still dealt with. The court cases from Bathurst Muslim court demonstrate that issues of marriage, divorce, and remarriage (reconciliation) must be considered and analyzed as strategies that both women and men used in the court to empower themselves within the marriage household. Women's drive to go to these new courts should also be seen as a bargaining and mediating tool. Scholars have used several approaches to describe and situate women's struggle in patriarchal societies. Barbara Cooper illustrates that both men and women find the negotiation of marriage to be simultaneously one of the primary means by which they can mediate change, and the locus of tremendous instability in their own lives. She further notes that "because marriage is negotiable, it becomes the ground upon which change is encountered by both men and women, sometimes quite unpleasantly."[55] Deniz Kandiyoti employs what she terms "patriarchal bargaining." "Patriarchal bargains influence both the potential for and specific forms of women's active or passive resistance in the face of their oppression. Moreover, patriarchal bargains are not timeless or immutable entities, but are susceptible to historical transformations that open up new areas of struggle and renegotiation of the relations between genders."[56] Nwando Achebe's use of the "female principle," a factor that

[55] Barbara Cooper, *Marriage in Maradi: Gender and Culture in a Hausa Society in Niger*, 1900-1989 (Portsmouth, NH: Heinemann, 1997), xxvii.

[56] Deniz Kandiyoti, "Bargaining with patriarchy," *Gender & Society*, 2 (1988): 274-290. See also Alaine S. Hutson, "Women, Men, and Patriarchal Bargaining in an Islamic Sufi Order: The

embodies all aspects of female involvement in society, could be used to understand women's struggle within the household.[57] By using the "female principle" she demonstrates, for example, the concept of a "seasonality" of women's power and authority. This enabled her to identify and analyze three major sources of Nsukka women's gendered power as they intersected, evolved, and/or transformed during a period that was characterized by intense European contact.[58] Elizabeth Schmidt sees the household as a terrain of struggle, manifest in disputes over the division of labor, control over female reproduction, and the redistribution of resources, which in turn help to shape the broader society.[59]

Women Seeking Divorce: Issues of Slavery

Among the matrimonial problems which were seen in the courts were also cases of slavery. In the early twentieth century women caught up in slavery went to the courts to seek some form of justice.[60] Following the abolition by the British of the Trans-Atlantic Slave Trade in 1807, the British made a determined effort to put a stop to the illegal trafficking in human beings in the area along the coast of the Gambia River. The anti-slavery effort led to the British occupation of St. Mary's Island (Bathurst) in 1816, the erection of six gun battery, and the building of Fort Bullen at Barra Point in 1826. However, despite efforts by the British, slavery

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Tijaniyya in Kano, Nigeria, 1937 to the Present," *Gender and Society,* 15, 5 (Oct., 2001): 734-753.

[57] Nwando Achebe, *Farmers, Traders, Warriors, and Kings: Female Power and Authority in northern Igboland, 1900-1960* (Portsmouth, NH: Heinemann, 2005), 27.

[58] Achebe, 2005, 28 and 41.

[59] Schmidt, 1992, 1.

[60] See Richard Roberts, "The End of Slavery, Colonial Courts, and Social Conflict in Gumbu, 1908-1911," *Canadian Journal of African Studies*, 34, 3 (2000): 684-713.

persisted in the interior of the country and many former slaves came to Bathurst to seek refuge or to find work.[61]

During the last few decades, scholars have been asserting that the illegalization of the trade by the British did not translate into the dramatic eradication of slavery. These scholars argue that the end of slavery was a slow and enduring process. Scholars also show interest in the resultant crisis of the slave trade and how former slaves adapted to the new conditions and opportunities that the establishment of colonial rule and the abolition of slavery provided.[62]

Lovejoy and Hogendorn argue that in northern Nigeria emancipation was expensive and it took a long time for slaves because it was achieved in part by self-purchase.[63] They also argue that emancipation affected people in different ways, particularly female slaves. Women slaves, for whom departure was likely to mean the loss of their children, were unlikely to leave. Parents also remained with the former owners but accumulated the means to buy the freedom of their children. Transactions in females were easier to hide than dealings in males, and slavery and

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[61] A catalyst in the persistence of slavery in the interior of The Gambia was primarily the jihads or the Soninke-marabouts wars 1850 – 1901. During these periods, Muslim reformers such as Foday Kaba (1818-1901) and Foday Sillah (1830-1894) in the south bank as well as Maba Diahou (1809-1867) Sait Matti in the North Bank, and Musa Molloh in the Upper River continued to attack and forcibly covert non-Muslims into Islam. Foday Kaba in particular remained resolute in pursuit of militant Islam until his defeat in 1901 by the British. During his last years, he was stationed in Kiang, the same area where the story above emanated.

[62] See Paul E. Lovejoy, Jan S. Hogendorn. *Slow Death for Slavery: the course of abolition in Northern Nigeria, 1897-1936* (Cambridge; New York: Cambridge University Press, 1993); Roberts and Miers, 1988); Robin Law eds., *From Slave Trade to "Legitimate" Commerce: The Commercial Transition in Nineteenth-Century West Africa* (Cambridge, New York: Cambridge University Press, 1995**);** Boubacar Barry, *Senegambia and the Atlantic slave trade* (Cambridge; New York: Cambridge University Press, 1998); Walter Rodney, *A History of the Upper Guinea Coast, 1545-1800* (New York: Monthly Review Press, 1970); Walter Rodney, "Slavery and Other Forms of Social Oppression on the Upper Guinea Coast in the Context of the Atlantic Slave Trade," *Journal of African History*, 7, 3 (1966): 431-47.

[63] Lovejoy and Hogendorn, 1993, 4.

slave dealing often continued for many years under the guise of marriage, or a man might ransom a woman slave through the courts simply to acquire her as a concubine. Colonial courts were also used by owners and their heirs to get bride wealth or compensation for their former slaves.[64] The end of slavery in Africa brought the nature of the economic, political, and social structure sharply into focus. In fact, Richard Roberts and Suzanne Miers state that as the political economy changed, so slavery, never a static institution, also changed, becoming sometimes harsher and sometimes more "benign." Slaves were bound up in a complex, ever-shifting web of social relations, fashioned by political and economic conditions.[65]

Another consequence of the transformation that was taking place during this period was that in West Africa slave flight increased. Klein found evidence of a mass exodus of slaves from the interior of French Soudan to coastal cities and peanut growing areas. Slaves fled from Maraka, Guinea and from the Haut-Sénégal-Niger to "safe" havens. In Senegambia, many also moved within Senegal, seeking to profit from the growing peanut economy. The development of cash cropping had no doubt provided opportunities for slaves to relocate and enter the expanding peasant economy as migrants. People who hosted these fugitives were Muslim clerics and communities in the peanut growing areas of the Senegambia.[66] James Searing also notes that during the colonial conquest or "end of slavery" slaves could and did flee from aristocratic

[64] Ibid., 37 and 40.
[65] Roberts and Miers, 1988, 6.
[66] Martin A. Klein, *Slavery and colonial rule in French West Africa* (Cambridge, New York, NY: Cambridge University Press, 1998).

masters. In doing so, they often joined Muslim communities or disappeared into the expanding peasant society that prospered as the monarchy and slavery declined.[67]

As Myron Echenberg demonstrates, several ex-slaves ended up being conscripted into the French Armée d'Afrique. These colonial conscripts are popularly known in French West African historiography as Tirailleurs Sénégalais or Moroccan Tirailleurs. These African conscripts were needed for the maintenance of stability as well as the expansion of France's desire to expand its spheres of influence in West Africa.[68] Like the French, the British colonial administration in the Gambia adopted an attitude towards slavery that was composed of a mixture of commitment and pragmatism. On the one hand, colonial officials condemned the presence of slaves within local communities but, on the other, they tolerated the continuation of this institution since, like colonial officials in Northern Nigeria, they lacked the military and material means to introduce substantial changes.[69]

As a result of these crises and uncertainties, some slaves and former slaves came to the courts to seek justice. One such case that came before the Muslim Court involved Isatou Jarju, a

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[67] James F. Searing, "No Kings, No Lords, No Slaves': Ethnicity and Religion among the Sereer-Safèn of Western Bawol, 1700-1914," *The Journal of African History*, 43, 3, (2002): 407-429; James F. Searing, "Aristocrats, Slaves, and Peasants: Power and Dependency in the Wolof States, 1700-1850," *The International Journal of African Historical Studies,* 21, 3 (1988): 475-503.

[68] See Myron Echenberg, *Colonial Conscripts: The Tirailleurs Sénégalais in French West Africa*, *1857-1960* (Portsmouth, NH: Heinemann; London: J. Currey, 1991).

[69] Alice Bellagamba, "Slavery and Emancipation in the Colonial Archives: British Officials, Slave-Owners, and Slaves in the Protectorate of the Gambia (1890-1936)," *Canadian Journal of African Studies*, 39, 1 (2005): 5- 41, 7.

runaway slave woman who took refuge in Bathurst and was being claimed by her husband.[70] According to the particulars of this case:

On May 2, 1907, Samba Darbo appeared before the Qadi and said, "my wife Isatou Jarju was given to me by Foday Kabbah and I have two children with her, Musa Darbo and Babu Darbo. She ran away from me and took away with her my children. I came to Bathurst in search of her and found that she had already married another man named Baboucar Jallow. I prefer having her back, or, if she refuses, I want my two children." The Qadi asked him who gave him the woman for a wife, and he said it was Foday Kabbah, that he gave Foday Kabbah $66 and he gave him the woman."[71] At that point the woman interjected and said, "You had wanted to sell me and my two children and knowing it I ran away with my two children and came to Bathurst."

The Qadi then advised her elder son Babu Darbo to go with his father, but he refused. He insisted on not going to his father because there was nobody there to take care of him. The Qadi asked Musa Darbo, the younger one, if he would go with his father. He also rejected going with the father and preferred to remain with his mother. The Qadi advised Samba Darbo, the father, to be aware of the claim he was making about his wife and two children because Isatou had said that she and her two children were slaves. The Qadi advised Isatou Jarju to return to her house (to the present husband) with her two children and train them, relying on the passage in the compendium of the Sheikh Khalil, "and the mother will be entitled to the custody of a male child."

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[70] In Islam, a man can marry a slave woman if she is manumitted.

[71] See the base-line chapter on the Soninke-Marabout wars, 1850 – 1901. This was a period marked by series of wars between Muslims and non-Muslims, as the Muslims attempted to forcibly convert non-Muslims to Islam.

As illustrated in this story, slavery persisted in the region well into the early twentieth century. For example, Alice Bellagamba notes that Musa Molloh Baldeh (a militant Islamic leader) kept several women as his wives, and the sources point to the fact that many of Musa's slaves were women and children. These women secured their freedom only after the First World War when relationship between Musa Molloh and the colonial administration deteriorated.[72] It is reported that militant Islamic leaders such as Foday Kabbah not only continued pillaging towns and villages, but carried on with the slave trade inland long after slavery was abolished by the British.[73] In this case, it is clear that even the Qadi was aware of legislations against slavery, admonishing Isatou's husband to be aware of mentioning Foday Kabbah's name, a militant leader reputed for slave dealing.

In the Gambia, slavery continued well into the early 1900s and during these periods, villages were pillaged and destroyed while hundreds, if not thousands, of people were sold into slavery and many more remained in bondage. The problem was so serious that till the first few decades of the 1900s, many people continued to remain in bondage and could be moved from one owner to another. For example, in a directive to Traveling Commissioners dated November 1st 1899, it is stated that:

> a register of slaves should be kept by each Commissioner showing name, age, sex, owner and residence of each slave and such slave should be periodically inspected. A person not registered as a slave when the register was started by the Commissioner in his District cannot at any subsequent date claim to be slave. On the death of the owner of any slave, the Commissioner should take care to inform all his slaves that they are free. All persons born in any district since the date of the proclamation of the slave ordinance in that district are freeborn (in January 1895). Any headman who neglects to report any case of slave dealing in his town should be punished.[74]

[72] See Bellagamba, 2005.

[73] See Gray, 1966.

[74] NRS, CS02/114, Traveling Commissioner not to accept any present from the natives.

In another circular dated January 2, 1899, the Administrator wrote to all Traveling Commissioners to prosecute men who bring slaves into the protectorate and take away slaves. He added slaves be given the option of either going back to their own country or come down to Bathurst and Kombo or elsewhere but they are not to stop near where they are freed.[75]

Hence, it can be argued that the transition to freedom was contradictory, but also provided windows of opportunities for former slaves to challenge their slave status since the legal status of slavery had been abolished. It also illustrates not only the contradictions in European attitudes towards slavery and emancipation, but also how African communities responded and adapted to the crisis and opportunities of the trade.

Conclusion

Certainly, the establishment of the court had a significant effect on the position of women within the household and in the general colonial Gambian society. Women took advantage of the opportunities provided in the Muslim court to challenge their husbands in order to get some form of redress such as divorce.

What made divorce particularly complicated was that Muslim judges were never women.[76] What did this mean about the fairness of interpretation of women's claims and perspectives in the court? Did these male judges, show tendencies that might disapprove chances for women to get a fair trial? Another challenge for women in the courts was the way qadis concluded their cases. In two of the cases above, the qadi gave different verdicts on a divorce

[75] NRS, CS02/6, Notes for guidance of Travelling Commissioners.

[76] This situation remains so even these days. At least, I have no evidence of otherwise.

and in both cases relied on the authority of Mukhtasar of Khalil. In the first case, the qadi's reason for not granting divorce was because the woman could not provide witnesses. In the second case, the qadi granted divorce insisting that release was lawful even without witnesses. The different conclusions could present difficult challenges for women to receive fair judgment, especially in a society where it was difficult to have eye witness accounts.

It appears that of major importance in Muslim marriages is the issue of dowry, maintenance, and polygamy. Unfortunately, the court records under review do not provide details of marriage (nuptial) practices – all of the arrangements that are required before a woman and man can get married in these Muslim communities. Perhaps the nature of marriages or how marriages were arranged led to some of the frictions that resulted in couples going to the courts. These issues include husband failing to adequately maintain (feed and clothe) his wife or wives and children, and the husband playing favorites and refusing to sleep with all of his wives, as prescribed in Islamic law.[77] The issues also include problems such as wives being uncontrollable, wives lusting after other men and lying to their husbands.[78] As a result, divorce becomes complicated and difficult.

In the next chapter, I provide a brief biography and the history of the Qadis who were employed at the Banjul Muslim court. I emphasize their educational background to show the interconnectedness of the region to the wider Islamic world. Most of these Qadis studied abroad in other parts of West and North Africa and in the Middle East, thereby influencing theological

[77] In the Holy Quran, suratul Nisa (IV), the chapter dealing with women defines rights of women particularly the obligations of men towards their wives.

[78] For stories of marital conflicts, see Mary Wren Bivin, *Telling Stories, Making Histories: Women, Words, and Islam in Nineteenth Century Hausaland and the Sokoto Caliphate* (Portsmouth, NH: Heinemann, 2007).

practices and the development of local Islam. In giving profiles or life histories of these selected Qadis, I argue that the outcomes of some cases were at times influenced by the Qadi's educational background and social ties in the community.

Chapter Four
Colonial Rule and the Creation and Recruitment of Qadis

Introduction

In this chapter, I profile the careers of some of the qadis of the period under review paying particular attention to their ethnic and religious origins and educational backgrounds. Though works on the production of Muslim judges exist in other parts of the world, in the region, scholarship on the subject is scanty despite recent efforts to study the Muslim courts.[1] Before the introduction of colonial rule in the early twentieth century, this region was already part of the wider Islamic world or what is characterized by Hunwick and Powell as "transnational Islam."[2]

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[1] I referred to the work of Michael G. Peletz, *Religious Courts and Cultural Politics in Malaysia* (Princeton, NJ.: Princeton University Press, 2002). In this book, Peletz writes about processes in which students are moulded in the image of the cleric to maintain and continue the tradition of authority and power. For works on the courts in the Senegambian sub region, See, Richard Roberts, "Text and Testimony in the Tribunal de Première Instance, Dakar, during the Early Twentieth Century, The Journal of African History, 31, 3 (1990): 447- 463; Ghislaine Lydon, "Droit islamique et droits de la femme d'après les registres du Tribunal Musulman de Ndar (Saint-Louis du Sénégal)," *Canadian Journal of African Studies* , vol. 41, 2 (2007): 289-307; Rebecca Shereikis, "From Law to Custom: the Shifting Legal Status of Muslim Originaires in Kayes and medine, 1903-13." *Journal of African History, 42* (2001): 261-283. Saliou Mbaye, "Personnel Files and the Role of Qadis and Interpreters in the Colonial Administration of Sint-Louis, Senegal, 1857-1911," in Benjamin N. Lawrence, eds. *Intermediaries, Interpreters, and Clerks: African Employees in the Making of Colonial Africa (*Madison: The University of Wisconsin Press, 2006); Allan Christelow, "The Muslim Judge and Muslim Politics in Colonial Algeria and Senegal," *Comparative studies in Society and History,* 24, 1 (1982): 3 – 24; Allan Christelow, *Muslim Law Courts and the French Colonial State* (Princeton, NewJersey: Princeton University Press, 1985); Shamil Jeppie, Ebrahim Moosa, and Richard Roberts eds., *Muslim Family Law In Sub-Saharan Africa: Colonial Legacies And Post-Colonial Challenges* (Amsterdam: Amsterdam University Press, 2010).

[2] John Hunwick and Eve Trout Powell, The African Diaspora in the Mediterranean Lands of Islam (Princeton: Markus Wienner Publishers, 2002).

I give an outline of the production and creation of Muslim judges in two ways; at the local level – at which individual qadis mostly came from villages who studied both in and outside of the Gambia and upon their return settled in Bathurst. Presumably they were appointed because of their qualifications but also because they were moderate. At the other level, I examine how qadis were created and selected by colonial officials to be dependable in carrying out the functions of the colonial state. Works by scholars indicate colonial systems relied on African leaders, including Muslim judges, to make colonial rule functional.[3]

I relied heavily on oral interviews for my sources because so little written information exists on the life of these qadis, especially their educational background and tenure in office. Some of the documented sources were in the form of newspaper or gazette entries announcing appointments or deaths of qadis. The only exception was the case of the third Qadi, Abdoulie Ceesay, because his tenure was marred in controversy – a contention that stimulated creation of documents in the form of letters and reports on the crisis and on the Muslim community. I interviewed a number of present qadis in the Greater Banjul Area (Banjul and the outlying suburbs), one former qadi, relatives of former qadis and people who have had at one time or another been associated with the Muslim court. I interviewed present qadis to find out about the changes and transformations in the processes of adjudication and the types and frequency of

[3] See for example, Abdulkadir Hashim "Servants of sharīʿa: qāḍīs and the politics of accommodation in east Africa," Sudanic Africa, 16 (2005): 27-51. Inheriting the existing legal structures was among the dilemmas that faced the post-colonial states. Native institutions including qadi courts were maintained so as to strengthen the indirect rule policy observed by the British. See J. N. D. Anderson, "Return Visit to Nigeria: Judicial and Legal Developments in the Northern Region, "The International and Comparative Law Quarterly, 12, 1 (Jan., 1963): 282-294; David Robinson, "Ethnography and Customary Law in Senegal (Ethnographie et droit coutumier au Sénégal), Cahiers d'Études Africaines, 32, 126 (1992): 221-237; H. O. Danmole, "The Alkali Court in Ilorin Emirate During Colonial Rule," Transafrican Journal of History, 18, (1989): 173-186; Kristin Mann and Richard Roberts eds., Law in Colonial Africa (James Currey: London, 1991).

cases that are now brought before these courts. Also, I want to find the extent of the differences in the types of education (legal training) between the former and present judges.

For example, many of the present judges interviewed indicated a major difference between them and their earlier counterparts in terms of legal training, general education, and the general procedures they follow in court. Qadi Ceesay of Brikama noted that one of the major differences lies in procedural rules:

> Before there were no qadi rules until when Omar Secka and some assistant qadis were appointed. They realized the need for the qadi court to enact procedural rules. This came to be realized in this very year 2010. In the past there were no rules for proceedings; judges in those days based their proceedings according to what they knew in *sharia* law. The qadi court rules were not also codified in those days. Now we have codified qadi court rules. We go through those rules and make our actions and judgments justified according to the procedural rules.[4]

For Qadi Ceesay, the courts should rely on codified rules in all aspects of court procedures. Court decisions should be based on written statutes and guidelines rather than individual perceptions. The qadi informants also noted an increase of cases relating to property rights issues, particularly land and inheritance issues. The qadis found these cases to be the most difficult to adjudicate because of "customary" and "traditional" rules governing land holding and inheritance. All of the informants, however, indicated that divorce still composed about seventy percent of all the cases they handle. This is interesting because majority of the cases during the colonial period were matrimonial. The informants also agreed that their level and type of

[4] Interview with Qadi Momodou Lamin Ceesay of Brikam Qadi Court, West Coast Region, December 14, 2010' at New Yundum, Kombo North District, W.C. Region. Assited by Lamin Yarbo.

education made them different from former qadis as they have to be well versed in both *sharia* and common law, unlike past qadis who were mostly knowledgeable in *sharia*.[5]

Five of the six present qadis interviewed studied abroad at university level, also attended secular schools, and they see higher education at modern formal universities and the qadi appeals court as key differences between themselves and former qadis.[6]

> In those days, our people were having their education here in the Gambia, Senegal and Mauritania, and were very vast in *sharia*. What they lack was the formal training as Judges. This is the formal training that we are undergoing in order to be more efficient. This is what brought these changes. After training from advanced universities people are beginning to appreciate our courts, as good enough to handle their problems.[7]

This informant seemed to be of the view that modern formal training is relevant in understanding and executing judicial matters. The country at present has no unit or department at its lone higher education institution where Islamic jurisprudence could be studied. Therefore it is imperative that prospect judges study abroad in modern universities to acquire the necessary knowledge and skills to serve as judges in present day Gambia.

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[5] Interviews with Qadi Momodou Lamin Ceesay of Brikam Qadi Court, West Coast Region at New Yundum, Kombo North District, W.C. Region. Interview with Qadi Momodou Lamin Khan, Banjul Magistrate Court, Buckle Street, August 30 2010. Assisted by Lamin Nyangado & Alieu Jawara. Interview with Qadi ALH. Muhammed Abdoulie Jaiteh, Serrekunda, London Corner, June 10, 2010. Assisted by Alieu Jawara. Interview with Senior Qadi Alhagie Masamba Jagne, Kanifing Magistrate Court (Qadi Court), Kanifing, December 12, 2010. Assisted by Bakary Sanyang, Alieu Jawara, and Lamin Nyangado.

[6] Nowadays there is a qadi appeal court at the Banjul High Court. It is chaired by Qadi Omar Secka and the other members are Alhagie Ensa Darbo, Alhagie Ousman Jah and Serigne Modou Kah.

[7] Interview with Justice Qadi Omar Secka, Qadis Appeal Court Chambers, November 23, 2010. High Court, Banjul, The Gambia, Assisted by Bakary Sanyang and Lamin Nyagado. Qadi Secka started his studies at the Muslim High School in Banjul, and then moved to the Islamic Institute in Latri Kunda. From there, he went to Sudan for two years and also spent one year in Mauritania. He also studied in Saudi Arabia at the Medina Munawara University.

Hence, it is essential to discuss ways in which the early qadis obtained their education and how they were incorporated into the colonial legal system, as well as how their training affected the way they dealt with cases which came before them. Finally, in order to understand the roles played by Muslim leaders employed by the colonial system, it is necessary to briefly describe the interconnectedness of the Gambia to the Islamic world, and particularly how Muslim clerics went far and wide in search of Islamic knowledge.

Islamic Knowledge: Diffusion and Adaptation

Several Muslim clerics from the Gambia had gained their religious education in parts of the Muslim world through a process John Ralph Willis describes as "traditional wandering and Shaykh seeking."[8] This practice of seeking knowledge is exemplified in the career of Al-Hajj Salim Suware, who, according to Lamin Sanneh, visited Mecca seven times and traveled widely in West Africa, including eastern and western Senegambia. Also called *Karamoko Ba* (Great Teacher), he studied the Quran, literature, grammar, law, theology, hadith (the traditions of Prophet Muhammad under many scholars and at different religious centers). After acquiring knowledge in a number of Islamic sciences, *Karamoko Ba* had a major career as teacher and preacher in many countries before founding the famous school at Touba, Guinea in the nineteenth century.[9]

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[8] See John Ralph Willis, "Jihad fi Sabil Allah-Its Doctrinal Basis in Islam and Some Aspects of Its Evolution in Nineteenth-Century West Africa." The Journal of African History, 8, 3 (1967): 395-415. This refers to the way in which Shayks or Muslim clerics spread their ideas by means of traveling with their followers. Through such travels, clerics seek more personal contacts thereby increasing their following.

[9] See Lamin Sanneh, "Futa Jallon and the Jahanke Clerical Tradition. Part I: The Histtorical Setting," *Journal of Religion in Africa,* 12, FASC. 1 *(*1981), 40. Sanneh stated that after the

Many other clerics of the likes of Al-Hajj Salim had gone outside of the region, as far as to the holy places of Mecca and Medina in the Arabian Peninsula, and had pursued their religious studies in the Hijaz, Cairo, and other capitals of the Middle East."[10] Richard Jobson, writing in the seventeenth century, notes that the clerics had "great books, all manuscripts of their religion . . . and were wandering from place to place."[11] It is assumed that these books would have come from Arabia and through North Africa by way of the Trans-Saharan trade – trade routes which linked West Africa to the outside world before the coming of Europeans to Africa. Willis argues that by the nineteenth century there were a number of highly sophisticated Muslim scholars who were well versed in the basic tenets of Islam. But it was only a small number of these students who went on to more advanced studies. This was done largely to make sure that clerics and their offspring monopolized knowledge, which could be used as a means of exerting power and exploiting the labor of their numerous students.[12]

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break-up of Diakha-Bambuhku in the fifteenth century major clerical dispersions developed towards Dentilia, Khasso, Bundu and the Upper Senegambia. See also David. E. Skinner, "Islam and Education in the Colony and Hinterland of Sierra Leone (1750-1914)," *Canadian Journal of African Studies, 10, 3(1976*).

[10] Willis, 1967, 399. Hajj (the pilgrimage Muslims made to the Holy City of Mecca), one of the five obligatory requirements of Islam, was one way Muslim clerics visited the Arabian Peninsula. See also Arnold Hughes & Harry A. Gailey, 3rd ed., *Historical Dictionary of The Gambia* (Lanham: The Scarecrow Press, 1999). According to Hughes and Gaily, *Historical Dictionary of The Gambia*, Senegambians were among the first West Africans to travel to Mecca, some as early as the eleventh century. Four routes across the Sahara were used by the pilgrims on this long, dangerous journey, each converging on Cairo in Egypt. A good number of these believers stayed in Mecca to study while those who did not stay still interacted with Muslims from all over the world.

[11] Richard Jobson, *A Discovery of the River Gambra and the Golden Trade of the Aethiopians* (London: Dawsons of Pall Mall, 1623), 94-97.

[12] See John Ralph Willis, *In the Path of Allah: The Passion of Al-hajj-Umar: An Essay into the Nature of Charisma in Islam* (London: Frank Cass & Co. Ltd., 1989).

Despite wars and confrontations which marred the region during the nineteenth century, a local clerical class emerged who were welcomed into communities for the different services that they provided. These services ranged from teaching, prayers, and medicines - including the making of amulets to be worn on the body for those in need. These clerics were much sought after in the nineteenth century, for they knew techniques like bleeding and leeching, administering hot vapor baths for fever; and they were skilled in setting fractures and insuring success in any enterprise by supposedly blessing them.[13]

The spread of Islam in the Gambia occurred simultaneously with the establishment of Islamic institutions and centers of learning. A study by David Skinner in Sierra Leone shows similar development patterns of educational institutions as in the Gambia. During the initial phase of learning, children attend Karanta or Dara (equivalent to primary schools), directed by a karamoko (learned man) or Alfa (scholar), where pupils learned the Arabic alphabet, Arabic words, how to recite the Quran, and the fundamental concepts and rituals of Islam.[14] Martin Klein also notes that in Mauritania and Senegambia there was a network of rural schools at which the Quran and certain important works of technology and law were studied.[15]

This search for Islamic knowledge continued well into the twentieth century with the aid of colonial educational system and *Madrassas* - growing alternative and formal Arabic/Islamic

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[13] Charlotte A. Quinn, *Mandingo Kingdoms of the Senegambia: Traditionalism, Islam, and European Expansion* (Evanston: Northwestern University Press, 1972), 54-55.

[14] David Skinner, "Islam and Education in the Colony and Hinterland of Sierra Leone (1750-1914)," (1976), 503.

[15] Martin Klein, A., "Social and Economic Factors in the Muslim Revolution in Senegambia," *The Journal of African History*, l, 13, 3 (1972), 26.

educational institutions. Presently, these institutions are common throughout the Gambia.[16] By the 1950s a number of Gambian students who studied in these *Madrassas* were being sent to study in the Middle East and North Africa. After graduation, some of these students returned and continued to influence Islamic theology and practice in the country by serving as religious teachers in government schools, *Madrassas*, Imams and Muslim judges.[17]

Making of Qadis – Education and Learning

One of the important results of the migrations and settlements of Muslims in the Gambia region was the proliferation of Muslim centers of education and learning and Islamic scholars and clerics locally known as *marabouts, seringes*, or *karamokos*. Some of these scholars became Islamic teachers and judges and they abounded at the local level in clerical centers and in villages, attendeding to daily matrimonial problems and other types of social conflicts in communities in which they resided. The cleric, through his Quranic school *karanta,* became the moral principal of a village, overseeing the education of the children as well as leading the

[16] The Department of State for Education negotiated with the relevant authorities within and outside the Gambia to have the certificates of the *Madrassa* endorsed based on the schools fulfilling the criteria of the education department. The government set up the Islamic Advisory Committee which was charged to look into certificates coming from Madrassas, and the Middle East, as a number of Gambian students continued their studies after the *Madrassa* in Arab and Middle Eastern countries.

[17] In June, 1959, students at Al-Azhar in Cairo, Egypt wrote back to Ministry of Education to explain the nature of their courses. The students indicated Arabic language and Islamic studies covering subject areas as Muhamedan Law, Exegesis, Tradition of the Prophet inclusive of the study of Texts and Terminology, Morphology, Rhetoric, Arabic Literature, Prosody and Rhyme, Logics and Polemics, Physics, Chemistry, Biology, History, Geography, English Language or French. The students in Cairo at the time were Arifan Mallam Sawane, Kambourama Karamba, Mohamed Al-Amin, Abu Bakr Fatajo, Saja Fati, Mohamed Mustapha Kanji and Omar Jah.

community in their spiritual pursuits.[18] These community needs also included conducting religious and social ceremonies such as baptizing babies, conducting marriages, and leading prayers. Benjamin Soares also argues that by turning to elite individuals for succor, religious authority has come to be centered on a few persons rather than institutions, like the Sufi orders, with which it has historically been associated.[19]

By the nineteenth century there developed a pattern of behavior between Muslim scholars (Moros) and Muslim communities along the riverine states of what is now the Gambia. This concerned the relationship between scholars and the rest of the Muslim community. Charlotte Quinn notices that life in these settlements was permeated by Islamic customs and laws affecting diet, dress, prayer, and virtually all facets of social existence, proscribing alcohol and marriage to non-Muslims, and concerning the relationship of the faithful with God and with each other as well as the political institutions of the society.[20] Islamic education was encouraged at all levels, as a person cannot become a Muslim if he or she does not acquire basic knowledge of Islam. Skinner, shows the centrality of education and learning to Islam when he notes, "Learned men are considered successors of the prophets, and the best among the people are those who learn the Quran or teach it, since reading and memorizing it is a way to paradise, and the Quest for *Ilm* (religious knowledge) is a duty of every Muslim."[21]

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[18] See Lamin Sanneh, *The Jakhanke: The history of an Islamic clerical people of the Senegambia* (London: International African Institute, 1979).

[19] Benjamin F. Soares, *Islam and the Prayer Economy: History and Authority in a Malian Town* (Ann Arbor: The University of Michigan Press, 2005), 153.

[20] Quinn, 1972, 61.

[21] Skinner, 1976, 507.

In the Gambia region, it is an old established tradition that children called *talibe* were sent to a cleric for religious instruction somewhere between the ages of seven to thirteen.[22] From the cleric, the child was taught to recite prayers and passages from the Quran and to write Arabic characters on a wooden board with reed pens and ink made from soot - all to be raised as a "good" Muslim. The children provided firewood both for their teacher and for the firelight by which they studied.[23]

Clerics also depended on students to work for them. They did this by preaching and establishing the ideology that the *daara* was a place where one was required to totally submit oneself to the whims of a cleric.[24] As Seringe Amadou Bamba indicated in his teaching:

> All men could not follow the path of total dedication to spiritual matters, but they could place themselves in a position of total submission to a religious teacher (Sheikh), putting their lives in this world and their hopes in the next world in his hands.[25]

The learning of the Quran takes place in a timeless manner at the *dara* or *Karanta (*school), which is held in the compound of the *karamoko* (the cleric). The *Karanta* is the basic educational institution for the transmission of knowledge, Islamic concepts and obligations to young people in the village, both boys and girls. Education starts at an early age, with the *karamoko* writing

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[22] It should be noted that generally it was and is still the male children who populated the *Daaras* or Quranic schools. These students are generally called *talibe* in Wolof. Among the Fula ethnic group, Islamic students are called *Almudo*.

[23] For more on Islamic education and teacher student relationship, see Jobson, 1623; Gamble. 1985; Searing, 1993; Sanneh, 1997; Louis Brenner, *Controlling Knowledge: Religion, Power, and Schooling in a West African Muslim Society* (Bloomington: Indiana University Press, 2001); Rudolph T. Ware, III. "'Njangaan': The Daily Regime of Quranic Students in Twentieth Century Senegal," *The International Journal of African Historical Studies,* 37, 3 (2004): 515-538; Donna L. Perry, "Muslim Child Disciples, Global Civil Society, and Children's Rights in Senegal: The Discourses of Strategic Structuralism," *Anthropological Quarterly* 77, 1 (2004): 47- 84.

[24] David Gamble, Linda K. Salmon, and Alhaji Hassan Njie, *Peoples of The Gambia: 1. The Wolof* (San Francisco: Gambian Studies No. 17, 1985).

[25] Gamble, Salmon, and Njie, 1985, 38.

lessons for students on wooden slates. This tutelage continues until such time as an individual student is able to write lessons for him or herself. Lessons vary according to an individual's time of enrollment and ability to comprehend the lessons. Generally, students are enrolled at different times of the year and, therefore, can all be at different levels in the study of the Quran. Here the *karamoko* relies on the help of senior students, who in turn teach new entrants as well as ongoing students.

A large number of students attend lessons daily but do not necessarily stay with the *karamoko*. However, some parents give their children to the *karamoko* who live with and perform various domestic chores for him, such as farming.[26] In other words, the student becomes part of the *karamoko's* family. It is this group of students who continue to seek a deeper understanding of the Quran and knowledge of Islam and even continue to become *karamoko* themselves.

Through this system of education and master-student relationship, the reproduction of Muslim judges is linked to the broad parameter of Quranic education and learning. It could be presumed that some of these students were heavily influenced in ideology and training by their masters since students were required to totally submit themselves to the whims of a master. Students' conceptions of law and justice are influenced by their masters and their cultural backgrounds. For example, the ways and manners in which students relate to their masters and study from precedence likely have lasting impacts on them as students and future judges. It could also be argued that students' view of relationships and their practical ideas for solving cases are

[26] In recent years, the recruitment and treatment of these students by their *karamoko* have generated controversy, particularly in the way the students are treated. Karamoko would have many children who would do farm work and perform various other tasks. It is common to find Arabic students going around from house to house begging for food, which they take to their *Dara.*

rooted in "African traditions" and "customs," particularly what could be accepted under orthodox Islam and an African version of Islam.[27] At times, differences between what is regarded as Islamic and "traditional" find their way into court rooms. It should be remembered that some of these judges were not products of any formal *sharia* institute, but instead were taught, mentored, and trained by individual clerics at these informal Quranic schools. On the other hand, some of the Qadis profiled were trained in Middle Eastern Universities and therefore were not constrained by master – student relationships, especially in recent years. Though, the education and training of these qadis were mainly "traditionally" based, they became important agents to facilitate change between men and women and to work in the colonial system.

An important aspect of the composition of the Bathurst Muslim Qadis group remains the issue of ethnicity and the question of origins. Since 1905 to date, out of the eight Qadis who reigned in the Bathurst Muslim court, only one qadi was not of the Wolof ethnic group. He was a man from the town of Serrekunda, a principal suburb of the capital. In fact, one of his sons is now an assistant to the present Qadi. It is unclear whether the recruitment of all these qadis who were related in one way or another was by intent or a case of historical accident. It is therefore important to look at the educational background of these qadis as most of them had their roots from the same villages or studied in the same villages and had perhaps the same master or masters in succession.[28] The "traditional" Islamic education is structured in such a way that,

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[27] For more on the Africanization of Islam see David Robinson, *Muslim Societies in Africa: New Approaches in African History* (Cambridge: Cambridge University Press, 2004). Robinson expresses how Africans appropriated Islam and made it their own.

[28] In an interview with Qadi Muhammed Lamin Khan, August 9. 2010, Qadi's Office Banjul. I have had several meetings with Qadi Khan and attended some his court sittings. He was born at Medina Seringe Mass Village and studied in local *daras* at Fass Saho and Kerr Makumba Njie villages in Gambia and Kerr Saa Rohki and Ndarr in Senegal. He also received extensive training

more often than not, it is the direct descendant such as sons who inherit the masters. In fact, even today, it is generally believed that masters pass on or transfer *baraka* (a word indigenized from Arabic) more to their sons than most of their students.[29] The master–student relationship therefore usually brings about a strong bond between the two, as well as a strong reliance on the wisdom and advice of the master, such that every action or decision of the student is dependent on the advice and teaching of the master.

More importantly, four of these qadis are related by blood and or through kinship. All of these four qadis traced their relations to Shaykh Mass Kah, an Islamic cleric who lived in the late nineteenth and early twentieth century. Reasons why these qadis linked themselves to a renowned cleric could be associated with ideas of memorialization and invention of tradition.[30]

After the establishment of Bathurst in 1816, many of these clerics migrated to the colonial city. There, they continued the practice of teaching the tenets of Islam and arbitrating

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in Fez, Morocco, Libya, and Algeria from 1977 – 1984, where he studied Sharia law. He holds a BA in General Law. Upon his return to Gambia, he worked briefly as a Quranic teacher, a qadi's scribe, and now as a principal qadi in Banjul.

[29] For an example of sons inheriting the position of their fathers see Cruise, O'Brien D.B., *The Mourides of Senegal: The Political and Economic Organization of an Islamic Brotherhood* (Oxford: Clarendon Press, 1971); Cheikh Anta Babou, *Fighting the Greater Jihad: Amadu Bamba and the Founding of the Muridiyya of Senegal, 1853-1913* (Athens: Ohio University Press, 2007).

[30] Invented tradition is a subject thoroughly discussed in which people continually reinterpreted the lessons of the past in the context of the present. For example, see Thomas Spear, "Neo-Traditionalism and the Limits of Invention in British Colonial Africa," *Journal of African History*, 44 (2003): 3-27; Eric Hobsbawn and Terence Ranger, *The Invention of Tradition* (New York: Cambridge University Press, 1983); Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985); Bala SK. Saho, "Appropriation of Islam in a Gambian Village: Life and Times of Shaykh Mass Kah, 1827 – 1936," *African Studies Quarterly*, 12, 4 (Fall 2011): 1-21.

domestic quarrels among those who did not want to take their cases to the European courts.[31] These Muslim elders were respected and gained a level of confidence in the community as judges and teachers and it was not difficult for them to take over as judges in the colonial system.

Colonial Rule and the Creation of Muslim Judges

In 1905, when the Muslim court was established, it became reasonable for the colonial government to turn to some of these Muslim clerics whom they assumed were conversant with Islamic law and appoint them as judges. The recruitment of Muslim scholars should be seen in light of colonialists' efforts to institute what they considered as peace and stability in a region fractured by years of religious conflicts and tensions, not only among Africans, but between Africans and Europeans. In some ways, these conflicts generated mistrust between Europeans and the larger Muslim communities.[32]

As already noted in chapter two, at the beginning of colonial rule, European officials moved quickly to recruit Muslim judges. Allan Christelow sees the recruitment into and involvement of qadis in the colonial system as a devise to defuse tensions between colonial agents and the larger Muslim populations. He notes that since the chief enemies of colonial officials were rural religious leaders, the Europeans understandably saw urban Islam (tendency

[31] From the 1820s to 1905, Muslim men and women residing in the colonial city were taking their cases to European secular court that was largely European and seen as Christian by the majority Muslim population.

[32] The reliance of colonial government on these Muslim leaders was also conditioned by years of conflict and wars waged from 1850 – 1901, when the region was plunged into a series religious wars instigated by militant Islamic leaders who attempted to build theocratic states, to purify Islam, and convert non-Muslims. These wars involved Europeans as they tried to control the region and local populations. The wars are coined in the Senegambian historiography as the Soninke-Marabout wars otherwise wars between believers and non-believers.

to accept change and willing to compromise), with its emphasis on law and book learning, as a progressive force. Christelow adds that the office of judge was one which the state had not only the right, but the obligation to fill with its own chosen candidate, and qadis could be seen as judicial bureaucrats, administering a uniform code of law.[33]

By and large, these judges came to be seen as an interface between the larger Muslim community and colonial interests. The colonial government did not only appoint and pay the salaries of these judges but also used them to talk to the larger Muslim groups in the colony and protectorate.[34] The colonial government also relied on these individuals to translate Islamic law and interpret "custom" in order to codify it for smooth administration of the colony and protectorate.

It has also been suggested that the involvement of qadis and the incorporation of *sharia* into the colonial legal systems required a method of recruiting respected Muslim judges for these roles. For instance, in Anglo-Egyptian Sudan, the British brought in a senior scholar from Al-Azhar University in Cairo to act as a mufti for the Sudan. They established new qadi training schools in Omdurman, Khartoum to train a new cohort of qadis sympathetic to the colonial government.[35] In French West Africa the recruitment of qadis as assessors and judges in the "native" courts was by governor-general upon nomination by lieutenant-governor of the West

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[33] Allan Christelow, "The Muslim Judge and Municipal Politics in Colonial Algeria and Senegal," *Comparative Studies in Society and History*, 24, 1 (Jan., 1982), 6.

[34] For example, as described in chapter three, a Bathurst Muslim elder, J.C. Faye was once asked by the colonial Governor to travel to the protectorate to explain to the Muslims the readiness of the British government to work with everybody.

[35] See Shamil Jeppie, Ebrahim Moosa, and Richard Roberts eds., *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges* (Amsterdam University Press, Amsterdam, 2010), 38.

African colonies, and selection was most likely made on the basis of proven loyalty rather than on competence and training.[36] In colonial Gambia, even though these qadis were self-trained, British officials relied on those whom they assumed were well learned in the Muslim law and in the "customs" and "traditions" of the country.

The primary concern for the British administrators was how colonial rule was to accommodate the religious leadership, including the qadis, just like political leaders within the influence of the state, so as to effectively monitor not only the activities of larger Muslim groups but also to control the operations of the qadis. In the political field, it was suggested that "identifying chiefs and incorporating them into colonial law and government meant supporting one claimant over others and privileging one form of authority with its linked moral and political ideas over many alternative forms."[37]

As discussed in chapter three, the British experience with northern Nigeria informed their actions towards Islam and Muslim communities in West Africa. The British practiced Indirect Rule which was based on a level of corporation between the traditional Muslim rulers and the colonial government. The British recognized the position of Muslim rulers and mandated them to run the affairs of northern territories while they (the British) remained as supervisors.[38]

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[36] Kristin Mann and Richard Roberts eds. *Law in Colonial Africa* (London: James Currey, 1991), 39.

[37] Mann and Roberts, 1991, 4.

[38] For relationships between the British colonial officials and the role of Muslim leaders in the administration of Northern Nigeria, see Lugard, Frederick John Dealtry. *The Political Memoranda: revision of instructions to political officers on subjects chiefly political and administrative, 1913 – 1918* (London: F. Cass, 1970); Sir Charles Orr, *The Making of Northern Nigeria* (London: (Frank Cass & Co Ltd, 1965); C. L. Temple, *Notes on the Tribes, Provinces, Emirates, and States of Northern Provinces of Nigeria* (London: Frank Cass & Co. Ltd, 1965);

The political relationships between Muslim leaders and Europeans brought with them economic and social relationships and an increase in the powers of Muslim leaders, particularly the qadis. In Nigeria, Murray Last suggests that in the "colonial caliphate," power was taken seriously by some Emirates.[39] M. G. Smith also argues that Indirect Rule was a method of political association – in which the Emirates could rely on British support, guns and bayonets to suppress resistance to their rule and the British would use the local rulers in the administration of conquered areas.[40]

It was certain that the British had the ultimate decision and the power to appoint and dismiss the Emirs and any other official. The power of the British to appoint and dismiss local rulers was a significant factor in determining the relationship between British official and the Emirs. The rulers quickly noticed the balance of power and recognized the sovereignty of the British. Since the conquest of the region, the position of the Emir no longer depended on the public or his Council but on the British who preserved his office. Christelow gives an interesting account of the dilemma the Emir of Kano often faced. He notes that the Judicial Council's audiences were held in a chamber within the Emir's palace and were hardly ever attended by the British Resident. Nonetheless, Emir Abbas had to consider the British Resident's possible reaction to a case should the losing party complain to him. Christelow further notes that whenever Abbas and his Council were in doubt, or were dealing with a sensitive matter which

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C. N. Ubah, *Government and Administration of Kano Emirate* 1900- 1930 (Nsukka: University of Nigeria Press, 1985).

[39] Murray Last, "The Colonial Caliphate of Northern Nigeria" in David Robinson and Jean triaud (eds) Le *Temps des Marabouts: itineraries et Strategies Islamiques en Afrique Occidentale Francaise, v. 1880-1960.* (Paris: Karthala, 1997), 74.

[40] M. G. Smith. *Government in Zazzau,* 1800-1950 (London: Oxford University Press, 1960), 206.

they knew to be a sensitive point to the British, the case was transmitted to the Resident for his views.[41]

This system of dominant rule created difficulties from the inception of colonial rule especially in ways which judgments rendered in front of British officials were seen to be fair. Also, how could former rulers suffer the insult of being placed in sight of all their subjects in a subordinate position? Paul Lovejoy and J. S. Hogendorn note that most of the ruling class accepted colonial rule reluctantly. They referred to the apologia of Muhammad al-Bukhari, the Waziri (the most trusted and loyal companion of the caliph) of Sokoto (1886-1910), that addressed the dilemma of their submission to the Christian incursion. In one of his treatises, "the Waziri explained that the protection of Muslims depended upon accommodation with the Europeans; emigration would turn the land into one of unbelief. It was the duty of Muslims to stay in office, despite the apparent treason involved in accepting colonial dictates."[42] This is what Robinson also characterizes as "accommodation" examined in the introduction. Certainly, the colonial system depended on the knowledge and wisdom of Muslim rulers which gave life to the colonial system because colonial officials depended on selected Muslim leaders to do the ruling. The relationship enabled colonial rule to function and shaped the colonial period in which the British had encouraged a quasi-independent status for the qadis and buttressed it with the treasuries that maintained the "colonial state." As shown in Chapter Two, in the Gambia, the qadi's salary became an issue in the quarrels among the Muslim community.

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[41] Christelow, 1994, 17.

[42] Paul E. Lovejoy and J. S. Hogendorn, "Revolutionary Mahdism and Resistance to Colonial Rule in the Sokoto Caliphate, 1905-6," *The Journal of African History,* 31, 2 (1990), 228-229.

Profiling Muslim Judges (Qadis)

The British dealings with Muslims were not much different from their counterparts in French Senegal. The French in recruiting judges, made attempts to ensure that the administration chose qadis from among Muslims known within the originaire community (the Four Communities of Senegal, Gorée, Dakar, Rufisque, and Saint-Louis, only places during the Colonial period, where African inhabitants were granted the same rights as French Citizens) for their Islamic education and connections so that the tribunal would enjoy legitimacy with Muslims. The first qadi the French appointed was Waly Ba, who was an originaire from St Louis and had come to Medine as a traitant in the 1870s and stayed on. In Kayes he headed a Qur'anic school and was known as a learned Muslim.[43] In 1905, in the Gambia colony, the British also first appointed Qadi Sulayman Gaye, a Bathurst Wolof and two assessors, Mass Jack and Waka Bah, notable Muslim priests of Bathurst who would soon become qadis. These two assistants were also Bathurst Wolof. Their parents were early migrants to Bathurst.

Sulayman Gaye was the son of Pompey Gaye, largely believed to be the first official Imam of the Bathurst mosque in the 1820s. Gaye was a water engineer who hailed from Senegal and was brought over to help in the building of the water supply system for the new British settlement. Sulayman Gaye was born in Bathurst in the first half of the 1800s and attended Islamic school or *dara* where he learned the basic tenets of Islamic religious knowledge and Islamic law under the tutelage of his father Pompey Gaye. Sulayman also studied at Rufusque in Senegal under the tutelage of Imam Malick Sy of Tivaoune.[44]

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[43] See Mann and Roberts, 1991.

[44] Interview with Late A. E. Cham Joof, Bakau, March 3rd 2011, The Gambia. Assissted by Hassoum Ceesay.

After graduation, he returned to teach at his father's Islamic school in Bathurst for many years, before he was appointed as first qadi in 1905. Gaye was of old age at the time of his appointment and had a short tenure in office. He served only for six months before he retired in August 1906. However, he spent most of the time as qadi establishing the modus operandi of the court.[45]

Gaye is credited for setting up the templates for the recording of proceedings of the qadi court – where all court details were written in Arabic and English, a practice which continued until 1913 when proceedings were then only recorded in Arabic. As the qadi court was quite new in the colony, Qadi Gaye worked very hard to spread the message of the court's mandate and benefits to the Muslim community of Bathurst through Friday sermons and other religious gatherings. It should be noted that Qadi Gaye's appointment had to do with his father's position as a Muslim elder and part of the Bathurst Mosque Association.

Sulayman Gaye was replaced by another notable Bathurst Muslim elder, Mass Jack who served under Gaye as an assessor. As second qadi, the duty fell to him to continue to strengthen the court and to work with the colonial establishment. Jack was in fact one of the deputy Imams of the Main Bathurst Mosque while serving as a qadi court scribe. Apart from serving as an assistant, Jack's appointment was based upon his Quranic education and religious training in

[45] Interview with Qadi Muhammed Lamin Khan, Banjul Muslim Court, August 9, 2011, Banjul, the Gambia. Malick Sy (c1855-1922) was one of the prominent religious leaders of the Tijaniyya Brotherhood in Senegal. After several years of searching for knowledge and his visit to Mecca, Sy settled in Tivaoune in the early 1900s where he died in 1922. Tivaoune has now emerged as one of the popular Islamic centers in the region.

theology and Islamic faith at Ndar in Senegal and Boutilmit School in present day Mauritania. He served as qadi for over two decades.[46]

Qadi Jack is remembered for building the first collection of Muslim law books for the qadi court, which served as reference for the qadi and his two assistants, Waka Bah and Amadu John. He had books and works of such great Islamic qadis such as Imam al-Adani, Joffat Al Hukam, Ibn Abu Zayd and Sheikh Khalil, renown Islamic theologians from the Middle East. Some of their works covered family and matrimonial issues.[47]

It was usually said that Jack's court style was similar to European court procedures. Jack would allow the complainant to state his or her case, then the defendant, then the witnesses and finally would allow both sides to add to their evidence, before he retired with his assistants to deliberate on a verdict.[48]

The successor to Mass Jack in the 1920s was Qadi Sheikh Sallah, another citizen of Bathurst. Unfortunately, not much is gathered about his tenure in office but he was said to have studied first in Bathurst at local Islamic schools and later at Kumne and Luga in Senegal. Qadi

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[46] Interview with Qadi Muhammed Lamin Khan, Banjul Muslim Court, Banjul, the Gambia, August 11, 2011. Also Charles Stewart indicates that during the nineteenth century, Mauritania was revered for its religious scholarship and many in West Africa seeking Islamic knowledge would visit renowned scholars such as Sahikh Sidiyya (1775-1868) who had disciples from the Futa Jallon to Southern Morocco and from Futa Toro to Timbuctoo. See, Charles C. Stewart with E. K. Stewart, *Islam and Social Order in Mauritania: A Case Study from the Nineteenth Century* (Oxford: Clarendon Press, 1973), 11.

[47] Interview with Late A. E. Cham Joof, Bakau, March 3, 2011, the Gambia. Assisted by Hassoum Ceesay.

[48] Ibid.

Sallah served as qadi for over a decade, during which he had a harmonious relation with the colonial officials.[49]

One of the qadis whose tenure brought contention and friction over the qadiship in the colonial city was Qadi Abdoulie Ceesay. Ceesay was one of the qadis not to have originated from Bathurst. Born in today's Senegal c1887, Ceesay's parents migrated to Bathurst when he was a child. Growing up, he attended one of the local Islamic schools until graduation. Qadi Ceesay proceeded to study at Pir and Kaolack in Senegal in Islamic jurisprudence.[50]

One of the most fascinating stories at the time was attempts by some members of the Muslim community to remove the new Qadi Hali Abdoulie Ceesay from office. In 1936 a major controversy surfaced around the qadiship involving Qadi Ceesay against a cross section of the Bathurst Muslim elders. Hali Abdoulie Ceesay was officially sworn in as Qadi of the Muslim Court on March 23, 1933 at the legislative Chambers. He was appointed by Governor Sir Arthur Richards, KCMG, in accordance with the Muslim Law Recognizance Ordinance 1899, amended in 1905. The Ordinance was created in order to provide an alternative adjudicature – the Muslim Court for complaints, involving mainly Muslims, with cases that could not have been handled by the Law Courts.[51]

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[49] Interview with Aji Fatou Sallah, Banjul, August 10, 2011, the Gambia. Assisted by Alieu Jawara.

[50] Pir is known as one of the Islamic centers in the region where many Senegambian clerics were believed to have studied. For example, see Ka, Thierno, *École de Pir Saniokhor: Histoire, Enscigment et Culture arabo-Islamiques au Sénégal du XVIIe au XXe Siecle* (Publié avec le CONCOURS DE LA Fondation Cadi Amar Fall á Pir, 2002).

[51] Hassoum Ceesay, "Qadi Abdoulie Ceesay and the 1936 Qadiship Dispute," *Daily Observer*, September 12–14, 1997, 13.

Qadi Abdoulie Ceesay was the fourth Bathurst Muslim Qadi; his predecessors were sheikh Sallah, Sulay Gaye and Mass Jack. However, Qadi Ceesay's tenure was the most memorable, less for its length but more because of the dispute it generated, its effect on the Bathurst Muslim community, and relevance to the pre-independence colony protectorate chasm. The crisis that followed Qadi Ceesay's appointment is itself a case of contention that deserves attention.

At the time of his appointment the Qadi was aged sixty and already a respected Muslim elder. He was a renowned scholar, well versed in Islamic Jurisprudence and Hadith. He was at the time a clerk of the Muslim court, a Quranic teacher who operated a dara (Quranic School) at No. 2 Rankin Street in Bathurst which enrolled dozens of students. Qadi Ceesay also served a stint as deputy Imam of Bathurst Mosque.

Thus Qadi Ceesay had an impressive record, particularly if appreciated against the backdrop of his immediate origins. As a matter of fact, he was a "stranger" to Bathurst; his origins have been traced by his descendants to the old Wolof state of Pakala, which extended over present day Saloum regions of The Gambia and Senegal. It was the Qadi's protectorate origins which his opponents used against him in their attempts to oust him as Qadi.

Attempts to disrobe Qadi Ceesay were spearheaded by a cross section of Bathurst Muslim elders who felt discomforted at having a non-Bathurst born citizen as Qadi. Their objection, however, did not manifest in the early days of his Qadiship; it was hoped his appointment was ad hoc and therefore his opponents were prepared at first to wait until the end of his tenure. But Qadi Ceesay's capability, wisdom, and scholarship impressed the colonial authorities so much that it was decided in 1935 to renew his term as Qadi and he was also allowed to retain the position of clerk to the Muslim court; he had a yearly salary of a hundred

pounds and the posts were non pensionable. The colonial authorities' decision irked the Bathurst Muslim elders who immediately launched a vitriolic opposition against his appointment.

The opposition was led by the venerable Imam Omar Sowe and Honorable Sheikh Omar Fye. On January 26, 1936 the Imam wrote to the Governor from his Kent Street address and appealed, "let the Muhammedan Court have a Qadi as we used to appoint a Qadi."[52] A month later, Honorable Fye petitioned King George V; he asked for the Crown's intervention into the affairs so that Bathurst Muslim elders would elect their 'own' Qadi. Honorable Fye further argued that Qadi Ceesay's only qualifications were his age and proficiency in Arabic, but that he did not have the unanimous support of Bathurst Muslim elders.[53]

The petition was followed by a meeting between the Colonial Secretary and representatives and Bathurst Muslim elders convened on February 5, 1936, to discuss complaints regarding Qadi Abdoulie Ceesay. The meeting took place at the Government Secretariat, Bathurst. Among those in attendance were the Honourable Fye; the Imam of Bathurst, Omar Sowe, the Imam while H.R. Obe and N.M. Assheton, were both senior colonial service officers.

At the meeting Imam Omar Sowe informed the colonial secretary that Qadi Ceesay's appointment was "an economy measure; there was not enough money to appoint both a Qadi and a clerk to the court." The Imam further complained that the government did not consult him as on former occasions about the appointment of the Qadi. Ousman Njie averred that there were

[52] National Records Service (NRS), Colonial Secretary's Office (CSO), CSO 3/207; Banjul, the Gambia.
[53] NRS, CSO3/207.

cases which the Qadi decided wrongly in court; he quoted a few cases and added "we want to have the privilege of electing our own Qadi."[54]

At the meeting the Muslim elders also complained that it was not right to have one person occupy the posts of qadi and clerk of Muslim courts, and that they were not consulted in the appointment by the Governor. The Colonial Secretary dismissed the Muslim elders' complaints and stressed the government's faith in the ability of the Qadi and quoted a certain case, Fatou Touray vs Rex, which the Qadi had adjudged and was referred to the Mufti of Mecca for verification and was upheld by the Meccan Qadi. "The present qadi is faithful to Government and could not be dismissed without good reason," clarified the Colonial Secretary. This dispute however did not distract Qadi Ceesay from his duties and he went on to work with the British in the introduction of the Muslim Marriage Certificates which the court still issues.[55]

The problems that emanated from the Qadi Ceesay controversy left the Muslim community seriously divided and damaged the relations between the colonial government and the Muslim community. Added to these differences were the beginnings of political agitations for independence and self-rule. The return of soldiers from the Second World War combined with the voices of educated Gambians warranted certain measures by the British to curb tensions and satisfy the demands of the Muslim population. The colonial officials were obliged under these circumstances to look for a person not only knowledgeable in Islamic law, but an educated and moderate cleric who could replace Qadi Ceesay. This person would also be well connected within the ranks of Bathurst Muslims and could bring different factions together.

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[54] For a full version of this case see the Daily Observer 12-14 September 1997, 13.
[55] Daily Observer, 12-14 September 1997.

To that effect, His Excellency, the administrator of the Gambia, on October 1, 1952, appointed Qadi Mass Abdou Rahman Jobe as Qadi of the Muslim Court of Bathurst to replace Qadi Abdoulie Ceesay. Qadi Jobe, like some of the judges, hailed from Bathurst but had roots in the clerical village of Medina Seringe Mass.[56] At an early age, he studied the Koran in a local *dara* in Bathurst while attending secular school. Qadi Jobe quickly excelled in both programs giving him the opportunity to further his Islamic education in the village of Medina Seringe Mass and also in Ndar and Pir in Senegal.

Upon his return, Qadi Jobe taught in a local *dara* and became prominent among Islamic scholars in Bathurst through his work with the courts, public sermons and other religious works. Qadi Jobe was fluent in both Arabic and English, two qualities that worked to his advantage.[57]

Another Qadi who had a memorable career at the Muslim court was Qadi Ilman Imam Bah. Born in Bathurst as Sait Matty Bah in 1925, Qadi Bah went to study at a young age in

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[56] This village is founded by Seringe Mass Kah in the Gambia in the early 1890s. Here the scholar immediately established a *daara* (Quranic school) and continued to teach the tenets of Islam and the Quran as well as instilling work ethics to his students and followers. The school soon attracted students from far and wide. This school became so popular that it attracted the attention of the colonial administrators. In the 1923-1932 report of North Bank Province concerning educational improvements, the report states, "There are a number of schools at which Arabic is being taught. The chief of these are: at Farafenni under Sherif Malainen a native of French Soudan; at Medina Seringe Mass: Under Mass Kah and his son, Momadu Kah, Jollofs (Wolof); at Sittannunku under Arafang Briama Dabo, a Mandingo; at Medina Cherno under Cherno Omar Jallo, a Toranko." The writer of the report was impressed with the level of Arabic education and continued, "Some of these teachers are highly educated men. I know one, a Mandingo now dead, who evolved a calendar whereby he could convert the days of the moon into days of the month, and even overcome the difficulty of the leap year." This report shows yearly gaps and lacks precise information of who this Mandingo teacher was. However this information is evidence that Mass Kah and many clerics had flourishing schools. See ARP32/33, p37, National Records Service, Quadrangle, Banjul, the Gambia. See Saho, "Appropriation of Islam in a Gambian Village" *African Studies Quarterly*, 12, 4 (Fall 2011): 1-21.

[57] Interview with Qadi Alieu Saho, Bakoteh, August and December, 2010, the Gambia.

Nyoro Senegal.[58] There he stayed for seventeen years and learned the basic tenets of Islam and memorized the Holy Quran. Thereafter, he came to Bathurst and enrolled in a secular school where he studied English for about seven years while he helped teach in a local *dara* in Bathurst.

After his secular education, Qadi Bah travelled again to Ndare in Senegal, and in Mauretania, to further study theology and Islamic jurisprudence. On his return, he was appointed as an assessor to Qadi Modou Mass Jobe, his cousin. Qadi Bah took over the reins of qadiship in 1966 after the death of Qadi Jobe. Unlike other qadis before him, Qadi Bah was known for his resolve to adjudicate by using "traditional dispute resolution mechanisms. For instance, he had a reputation for bringing disputants to his house, away from the formal court setting where he mediates between them. Qadi Bah retired in 1986."[59]

One of the qadis whose tenure in office coincided with numerous Gambians returning from abroad with university degrees, mainly from North Africa and the Middle East, was Qadi Alieu Saho, who took over from Qadi Bah. Qadi Saho studied the Quran under his father's and elder brother's tutelage in his village of Fass Saho. At the age of maturity, he furthered his

[58] During the second half of the nineteenth century Islam only became widespread when it was forced, often by the sword. This forceful dissemination of Islam, known as *jihad*, came to be known as the Soninke-Marabout Wars, which were waged from 1850-1901. One of the key leaders of these wars was Maba Diahou Ba (1809-1867), who had waged a series of wars in Baddibu and Niumi (Northern districts of the Gambia River). After his death, he was succeeded by his son Sait Matti (1850-1897), who was later cornered by the French and sought sanctuary in Bathurst, now Banjul (capital city of the Gambia) with his family and supporters. Qadi Bah is a descendant of Maba and nicknamed after Matty. Maba was killed in 1867 during a raid in Sine Saloum. His death did not end the fighting between the Muslims and Non-Muslims. Gray, 1966 documented the rise of Muslims against their non-Muslim overlords up and down the River Gambia until 1901 with the defeat by the British of the last militant cleric.

[59] Interview with Saihou Bah, Kanifing South, August 10, 2011, the Gambia. Assisted by Alieu Jawara.

education in Kerr Ngata village in Senegal for three years after which he returned to Fass Saho and taught at his father's school.

After he migrated to Bathurst, in 1966, Qadi Saho started preaching in Wolof at Radio Gambia in a program called *jangale* (to teach). This was done with Ismaela Baye who preached in Mandinka. In 1976, he started another radio program narrating the life of Prophet Muhammad. At the time of his appointment as qadi in 1981, Qadi Saho was leading another radio program in which he translated the Quran into Wolof.

Qadi Saho is also known for his skills in poetry and religious songs. He is also part of many religious groups that promoted Islam in the country. For example, he was a one time member in the Law Reform Committee (1983), a member of the hajj committee (1979), and a member of a group to evaluate certificates of those who studied abroad in Islamic universities (1987).[60]

Qadis and the Colonial System

The implications of the alliance between Muslim leaders and colonial officials can be described by looking at how the relationship between colonial agents and Muslims developed over time. Another way to examine the relationship is to look at how Muslims were united or divided in their strife to participate in colonial rule. The question then is, what roles did these Muslim leaders play in the functioning of the colonial system while maintaining their Muslim identities?

Colonial attitudes towards Islam and Muslims varied from one conquered territory to another. The French in particular had literally divided Islam between "Islam Arabe" and "Islam

[60] Interview with Alhagi Qadi Alieu Saho, Bakoteh, August and December, 2010, the Gambia.

Noire," simply, divisions between Arab and Black Islam. According to Jean-Louis Triaud, the French view of Islam was one of barbarism and fetishism. He notes, "Islam was the vector and sign of backwardness, as compared with the industrial societies. In the context of Black Africa, the place it occupied was different and more complex. Islamic culture was judged, on the one hand, to lag behind Western Civilization; but on the other, it was seen to be in advance of sub-Saharan societies designed as 'fetishistic.'"[61] As some colonial officials became more familiar with Muslims and their institutions, the religion was seen as one that could be a bridge between the 'savages' and the modern (Western) world as a civilizing force, based on its system of education and codified laws.[62] In West Africa, Islam was at times seen as hostile to European colonization and there was fear of Islamic militancy. Senegambia had seen militant attempts of the spread of Islam, enforced by militant Islamic leaders who attempted to impose theocratic states. There was always a fear of Islamic backlash which in some ways shaped British-African relations. Lovejoy and Hogendorn note that Mahdists or radical Muslim preachers were closely

[61] Jean -Louis Triaud, "Islam in Africa under French Colonial Rule," in Nehemia Levtzion and Randall L. Pouwels (eds.), *The History of Islam in Africa* (Athens: Ohio University Press, 2000), 171.

[62] For discussions on Islamic Noire and French Islamic policy towards Africa, see David Robinson, *Paths of accommodation: Muslim societies and French colonial authorities in Senegal and Mauretania, 1880-1920* (Athens: Ohio University Press, 2000); David Robinson, "French Islamic Policy and Practice in late nineteenth-century Senegal," *Journal of African History*, 29: 3 (1988): 415-435; Nehemia Levtzion & Randall Pouwels eds., *The History of Islam in Africa* (Athens: Ohio University Press, 2000); Cruise D. O'Brien, "Towards an 'Islamic Policy' in French West Africa, 1854-1914," *Journal of African History* 8: 2 (1967): 303-316; Robert Launay & Benjamin F. Soares, "The Formation of an 'Islamic sphere' in French colonial West Africa," *Economy and Society* 28 (1999): 497-519, Muhamamd Sani Umar, "The Tijaniyya and British Colonial Authorities in Northern Nigeria," in: Jean-Louis Triaud & David Robinson édss., *La Tijâniyya* (Paris, 2000): 327-355.

watched by the colonial officials after the Mahdist uprisings in Northern Nigeria and adjacent regions (French Niger, German Adamawa) between 1905 and 1907.[63]

Perhaps, the life stories of these qadis and the way they were incorporated into the colonial system present a viewpoint that allows an appreciation of how Muslims generated urban societies, or how Muslim populations constructed their histories through contacts with European colonialism. In colonial Bathurst, one could argue that Muslims' response to colonial rule set a pattern of hostile relationships within the Wolof ethnic group which in turn created divisions and disagreements among Muslims. In fact, these differences also affected the political engagement of Muslims, especially in the crucial years leading to independence. The problems among them were so serious that they could not unify behind the Muslim Party formed and led by one of the key players in the Muslim divide.[64]

In spite of the differences, there were times when the Muslims remained united. Desirous of the positions of their Christian counterparts, the Muslim elites also wanted to be part of the

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[63] Paul Lovejoy and Jan S. Hogendorn, "Revolutionary Mahdism and Resitance to Colonial Rule in the Sokoto Caliphate, 1905-1906," *Journal of African History*, 31: 2 (1990), 217-244.

[64] Ibrahima Garba Jahumpa (1912-1994), Bathurst Wolof and senior figure in the Muslim society whose family immigrated to Bathurst from Senegal in 1816. In January 1952 formed the Gambia Muslim Congress out of some 40 Muslim societies including the Banjul Muslim Society. Jahumpa was returned to the legislative Council but continued to remain in quarrels with other Muslim leaders such as J.C. Faye and P. S. Njie who also had their own political parties. Jahumpa was instrumental in bringing charges against Imam Omar Sowe and Ousman Jeng. Jahumpa and some of his friends filed an application in the Supreme Court for an injunction to restrain Omar Sowe, the Imam of the Central Mosque of Bathurst, from leading prayers in this mosque because of a controversy surrounding the school centres on allegations of adultery against Mr. Jeng and condonement of such actions by Imam Omar Sowe. Furthermore, Jahumpa and his colleagues believed that these offenses were against Islam and therefore good enough to exclude Jeng and Sowe from the management of the school. See Arnold Hughes & Harry A. Gailey, 3rd ed., *Historical Dictionary of The Gambia* (Lanham: The Scarecrow Press, 1999), 82-84; Sulayman Sheih Nyang, *The Role of The Gambian Political Parties in National Integration* (Ph.D., Dissertation, University of Virginia, 1974).

colonial system and benefit from it economically and socially by becoming salaried workers and business persons. Arnold Hughes and Harry Gaily indicate that Muslim elders were worried about their Christian brothers and sisters occupying most of the jobs available to Africans. They note that leaders like Jahumpa sought to play on the grievances of Bathurst Muslims, particularly with respect to the dominance of the smaller Christian community in public life and modern employment.[65] Hence, the Muslims went to great lengths to send their children to western secular schools that accommodated the needs of Muslims because their children could study basic Islamic sciences and the Quran while studying western educational curricula. The Muslims responded to these new opportunities so they could be gainfully employed in the colonial system.

It is important to underline that since the British colonial officials did not have an official Islamic policy as noted in chapter three, the Muslim judges had a good deal of leverage in the courts, particularly in decisions of the court. The qadis could also decide to talk to appellants to settle their differences out of court. Importantly, the qadis were free to rely on any Muslim jurist or book of Islamic theology as long as the qadis confined their pronouncements within the ambit of the books referred to. However, this did not mean that the colonial administrators were not concerned with the activities of the court and qadis. In the Gambia, colonial officials monitored the courts by revisiting cases and made sure court transcripts were translated into English, especially during the first decade of the court's existence.

For the Europeans, the qadi's office was one which the state had not only the right but the obligation to fill with its own chosen candidate, and qadis could be seen as judicial bureaucrats,

[65] Hughes and Gailey, 1999, 83.

administering a uniform code of law.[66] This meant that the British keenly followed the qadi's decisions and kept an eye on the outcomes of the litigations. Susan Hirsch observes that in postcolonial Kenya, the qadis' courts operate under close supervision of the secular state. She notes that supervision takes a variety of forms: qadis must comply with the edicts concerning the administrative operation of the courts; their work is periodically reviewed; and any appeals of their decisions are heard in the Kenyan High Court rather than in an Islamic Court of Appeal.[67]

Conclusion

The relationship between the colonial government and Muslim judges should be examined against the backdrop of Islamic and colonial expansion in the region. The region became part of the Islamic world for many centuries and Islamic institutions continued to function in many villages and towns, which flourished under the guardianship and teaching of Islamic scholars. Islam spread steadily through education, which mainly included studying of the Quran, the teaching of Arabic language and public preaching, mainly by itinerant Muslims. By the early twentieth century, Islam became the dominant religion in Senegambia and today, quantitatively, about ninety percent of both populations are Muslim.

It should also be understood that most of the qadis discussed thus far studied at "traditional" Islamic schools rooted in African "traditions" and "customs" - where the cleric was the teacher and judge and could influence the ideology and world view of his students. The creation of Muslim judges and their recruitment into the colonial system could therefore be seen

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[66] Mann and Roberts, 1991, 6.

[67] Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Court* (Chicago: University of Chicago Press, 1998), 10.

in light of hereditary processes where ruling or retiring qadis would recommend to the colonial government who they thought capable of replacing them. The qadis appointed at the Bathurst Muslim court had either been assessors or relatives to the retiring qadi with the exception, of course, of the first qadi whose father was also part of the Bathurst Muslims Association. Like in the "traditional" Muslim schools or *daras,* where leadership was passed from father to son, a similar system existed in the Muslim court.

The imposition of colonial rule compelled European colonial officials to work with African chiefs and rulers, including Muslim clerics who had been acting as judges before the arrival of the colonizers.[68] In order to ensure that the qadi courts would be legitimized and trusted by Muslims, the colonial administration chose qadis from among Muslims based on their Islamic education and connections. Qadis enjoyed respect and recognition from the society due to their intellectual and cultural contributions, and were also esteemed for their esoteric knowledge. Qadis were people with whom colonial rulers could work to contain Muslims and to peacefully administer the colony and the protectorate. The relationship between the British and qadis also shows that colonial rule was made possible partly because of the results of Muslim leaders' involvement in the colonial machinery.

In the next chapter, I examine the establishment and parameters of the "native" Courts in order to compare two judicial systems; one strictly *sharia* and the other a mixture of customary laws, *sharia,* and English law. When the "Native" Courts came into being, the British attempted to codify customary practices and limited the boundaries in which Africans could navigate. In

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[68] Abdulkadir Hashim "Servants of sharīʿa: qāḍīs and the politics of accommodation in east Africa," *Sudanic Africa,* 16 (2005): 27-51. Inheriting the existing legal structures was among the dilemmas that faced the post-colonial states. Native institutions including qadi courts were maintained so as to strengthen the indirect rule policy observed by the British.

spite of the immutability of the law, it is evident from the records that some Gambian colonial officials such as chiefs took advantage of the weaknesses in the law and made their positions a source of personal aggrandizement. Other Gambian colonial officials would use personal contacts with men on the spot in order to gain favors, while some would exploit the fractures within the colonial law to abuse the population only to escape the wrath of the new laws by fleeing to the French territory.[69]

[69] French territory is present day Senegal, a country which surrounded The Gambia on all sides except the Atlantic Ocean. The delimitation of formal boundaries between Gambia and Senegal in 1890s did little to curb the flow of citizens from one region to another.

Chapter Five
The Dual Legal Terrain: Native Courts as Instruments of Colonial Rule

One of the outstanding problems of European occupation of Africa in the early twentieth century, which has been widely discussed by scholars, was the effects of colonial occupation and rule on Africa and the African people. Most scholars maintain that European powers had much difficulty in administering their colonies because colonial authorities were ill-financed and understaffed: they had to depend on traditional authorities, laws, and customs to maintain their rule.[1] The British colonial administrative system led to the creation of "native" courts headed by local chiefs. The precarious nature of colonialism perhaps led some scholars to suggest that colonial regimes were unable to impose either English laws and institutions or their own version of "traditional" African ones on to indigenous societies.[2] I argue that in the Gambia, the arrival of the Europeans in many ways altered African judicial culture or what Richard Roberts describes as the changes in "landscapes of power."[3] British colonial rule in Gambia impacted not only the legal terrain but also the political landscape as colonial officials divided the colonized territory into administrative divisions and installed chiefs to do the ruling.

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[1] For discussion on colonialism and colonial rule see Michael Crowder, "Indirect Rule - French and British Style," *Africa*, 34 (1964):197-205; Michael Crowder and Orlkine eds., *West African Chiefs: Their Changing Status Under Colonial Rule and Independence* (Ife: University Press of Ife, 1970); A. E. Afigho, *The Warrant Chiefs: Indirect Rule in Southeastern Nigeria, 1891 – 1929* (New York: Humanities, 1972).

[2] For example, see Sara Berry, "Hegemony on a Shoestring: Indirect Rule and Access to Agricultural Land," *Africa: Journal of the International African Institute*, 62, 3 (1992), 328.

[3] Roberts Richard. *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912* (Portsmouth, NH: Heinemann, 2005), 30. Roberts says that landscapes of power thus contain physical institutions such as chieftaincy, heads of households, and courts as well as social and cultural practices such as kinship, marriage, gender, slavery, labor, religion, leisure, wealth, and authority.

In this chapter, I examine the functions of the "Native" courts, institutions which were running parallel to the Muslim court. The "Native" courts operated in the protectorate and the Muslim court in Bathurst. I do this for various reasons. First is to examine how the imposition of colonial rule altered the "traditional" judicial culture and the political division of the country. Second is to show the parameters and functions of the "Native" courts as instruments of colonial rule. Third is to explore the dual legal terrain or the two judicial systems: the Muslim court, which was strictly *sharia*, and the "Native" courts, which were a mixture of customary laws, *sharia,* and English law. I situate the story of "Native" courts in the history of late colonialism and early colonial rule in Africa, especially in the Gambia.

Conclusions for this chapter are drawn from documents related to judicial correspondences between travelling commissioners, governors, and the Home Office in London. I have relied primarily on government documents from the National Records Service and Ministry of Justice as well as documents from the "Native" tribunal of a district court in Niamina Sambang Village. Unfortunately, very few documents exist from "Native" courts which details daily court proceedings. However, for some unexplained reasons, the 1965-71 court proceedings from Niamina District Court are all hand-written in English and available at the National Records Service. Though, the dates of this particular District Court goes beyond the first half of the twentieth century, the documents are useful in understanding the extension of colonial rule to the protectorate. These district court and the government documents offer insight into not only how the "Native" courts were established, but the documents also reveal local dynamics via the court rooms through such conflicts as wives against their husbands, domestic violence, and societal arrangements such as marriage patterns. I give examples from this particular District Court because the documents highlight the work of "Native" courts in the Gambia.

Revisiting Colonial Rule

The debate on colonialism and colonial rule has endured for many decades. Scholars suggest that from the fifteenth century onwards, Europe became the agent of global imperialism and set itself as the standard of evaluation on most aspects of social, economic, political and cultural life. Colonialism and colonial rule were institutionalized and justified within the ideological system based on the principle of universal rights in the second half of the eighteenth century. During emancipation, in particular, colonial administrators argued that the majority of the colonized did not have the cultural and intellectual capacities necessary to responsibly exercise their rights. These ideas became problematic and resulted in ambiguities and contradictions in how the colonized were ruled. According to some scholars, colonialists tended to set their cultures, norms, values and social lives as the standards of civilization everywhere they went. In fact, many structures of colonialism were guided by the social, cultural, political and economic differences between Europe and its "other."[4]

Between 1880 and 1900 almost all of Africa was carved out and occupied by European powers, especially Britain, France, Portugal, Belgium, Italy, Spain and Germany. Adu Boahen recognizes the rapid colonization during which Africans were converted from sovereign and royal citizens of their own continent into colonial and dependent subjects.[5] The systems of administrations imposed by these powers, according to Michael Crowder were *ad hoc* and

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[4] Edward Said, *Orientalism* (New York: Vintage Books, 1979). See also Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in the Colonial Rule* (Berkeley: University of California Press, 2002); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ.: Princeton University Press, 1996); Gary Wilder, *The French Imperial Nation-State: Negritude and Colonial Humanism between the Two World Wars* (Chicago and London: University of Chicago Press, 2005), 4.

[5] A. Adu Boahen, *African Perspectives on Colonialism* (Baltimore: Johns Hopkins University Press, 1987).

greatly influenced by the personality of the men imposing them and the circumstances under which a particular area was occupied by conquest or by treaty.[6] Historians have over the past few *decades* distinguished these systems by classifying them either direct rule or indirect rule. Direct systems of administration are generally associated with the French and Portuguese colonies in Africa whereas indirect rule is generally associated with the British extensions or overseas colonies in Asia and Africa. This marked a period of effective colonization of the African continent motivated principally by the need for raw materials for industrial Europe and the need for markets for the sale of Europe's manufactured goods.[7]

Assimilationist policy generally held that the African had to prove himself worthy of assimilation by demonstrating to the colonizers that he had the attributes of citizenship, qualities which were determined by the colonial power. In so doing, the French colonial government made no distinction between her colonies and France in administrative sense – Senegalese and Algerians could be considered as overseas departments. An example of such a representative was Blaise Diagne of Senegal who was elected to French parliament in 1914.[8] Indirect rule policy postulates that British administrators decided to rule as much as possible "indirectly." That is, they would allow "traditional" African leaders to maintain their positions when and where possible, applying "African law" to local matters. Further, in the realm of law, "tradition" was

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[6] Michael Crowder, *West Africa Under Colonial Rule* (Evanston: Northwestern University Press, 1968).

[7] See A. G. Hopkins, *An Economic History of West Africa* (London: Longman 1973); Ralph A. Austen, *African Economic History: Internal Development and External Dependency* (Portsmouth, NH: Heinemann, 1987).

[8] See Crowder, 1968.

transformed as a new class of African judges was created to apply what was, supposedly, age-old "customary law."

The difference between the colonizers and the colonized was partly manifested by the policies of Lord Frederick Lugard, one of the early proponents of indirect rule in northern Nigeria. Lugard reasoned that the Africans or natives should rule themselves through individuals chosen from their given communities. Among these Africans would be the chiefs and leaders who would be middle managers in the colonial administration.[9]

The implementation of colonial law was difficult in terms of enforcement due to lack of resources, and in terms of judgment because of the problem with translation. Archival records and oral sources from the Gambia show that the colonial legal terrain was uneven and was greatly influenced by the presence of the British and locals who worked in the colonial system. In fact, some Gambian colonial officials, such as chiefs, took advantage of the weaknesses in the law and made their positions a source of personal aggrandizement. Other local Gambian colonial officials would use personal contacts with British colonial agents working in the Gambia in order to gain favors. Some would exploit the fractures within the colonial law to abuse the population under their control only to escape the wrath of the "new" laws by fleeing to the French territory.[10] For example, in 1920, Chief Abdoulie Janneh was indicted of embezzlement and dereliction of duty. He was accused by the Travelling Commissioner of fining people right and left without accounting for the fines, presumably using the funds for his personal wellbeing.

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[9] See Frederick Lugard, *The Political Memoranda: revision of Instructions to Political officers on Subjects Chiefly Political and Administrative* (Frank Cass and Co. Ltd, 1970).

[10] French territory is present day Senegal, a country which surrounded the Gambia on all sides except the Atlantic Ocean. The delimitation of formal boundaries between Gambia and Senegal in 1890s did little to curb the flow of citizens from one region to another.

However, Janneh escaped the full penalty of dismissal and reimbursement by appealing to R.H.H. Whitehead Travelling Commissioner of the MacCarthy Island Province, with whom he had developed personal ties. In a memo from Whitehead to the Colonial Secretary dated February 10, 1921, Whitehead asked for clemency for the chief saying "he has made effort and has accomplished some improvements in his districts, especially in Kaur. May I suggest that His Excellency the Governor will consent to a part remission of the fine from £80 to £63."[11] This case could stand not only as an example of the need to understand the role of individual officers in accomplishing the "colonial project," but also how some individual Africans used colonial rule to their advantage. Richard Rathborne suggests that understanding colonialism requires looking at individual lives of colonial agents. As agents of colonialism they are usually assumed to have been at best insensitive, clumsy and unappreciative of the cultures within which they were privileged to work; at worst they aided and abetted the gross extension of heartless exploitation.[12] Here, the Commissioner made his appeal despite mounting evidence against Chief Janneh for his corrupt practices and abuse of office.

The imposition of colonial rule necessitated the principle of ruling through the native chiefs and leaders and consequently, the creation of "Native" Authorities - the "Native" court system. Murray Last notes that the imposition of the Native Authority System on Nigeria modified the nature of administration that was in place before colonial conquest. This included the institutionalization of Islamic offices into salaried Emirs as well as a British administrative system with district heads responsible for peacekeeping and tax collection in the emirates. Some

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[11] National Records Service (NRS), Colonial Secretary's Office (CSO), CS02/391, Abdoulie Janneh

[12] Thora Williamson, *Gold Coast Diaries: Chronicles of Political Officers in West Africa, 1900-1919*. Edited by Anthony Kirk-Greene (London: Radcliffe Press, 2000), 13.

of these changes, according to Last, also included "the creation of a local courtly culture around the newly appointed 'District heads' in rural areas, with a more impersonal territorial authority replacing kinship and clientage as the means of subordinating people to authority."[13] These changes, coupled with increasing access to education and training, reshaped social and political relationships between household and lineage heads as well as between individuals and titleholders. Last notes that the discrete colonial show of power could not fail to capture the attention of even the average person because by 1912, the presence of colonialism was visible by the building of railways, the telegraph wires, and new roads.[14] Mahmood Mamdani also describes how "the decentralized arm of the colonial state was the Native Authority and if the Native Authority was akin to a colonial fortress in a hostile wilderness, the chief was its knight whose amour must not be allowed to be breached at any point. Native Authority, therefore, vested a certain amount of power in the chiefs to bring order and (in many instances disorder), within their jurisdiction."[15] Similarly, Richard Rathbone shows that the establishment of Native Authorities Ordinances, passed in 1944 in Ghana, gave certain legal and practical power to the chiefs to take an effective part in the administration of the colony. From the outset, native authorities were divisional (paramount chiefs, state councilors, and council of chiefs), each vying for space and control.[16]

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[13] Murray Last, "The Colonial Caliphate of Northern Nigeria" in David Robinson and Jean triaud eds., Le *Temps des Marabouts: Itineraries et Strategies Islamiques en Afrique Occidentale Francaise, v. 1880-1960* (Paris: Karthala, 1997), 75.

[14] Ibid., 75.

[15] Mamdani, 1996, 53.

[16] Richard Rathborne, *Nkrumah and the Chiefs: The Politics of Chieftaincy in Ghana*, 1951 – 1960 (Athens: Ohio University Press, 2000), 17.

Hence, understanding the circumstances in which these "new" courts were established, as well as how cases were received and dealt with, can offer historians a different way of viewing colonialism and colonial rule. Also, differences in how colonial rule was applied in colonized areas necessitate the understanding of each local setting in which the "new" courts operated.

"Native" Courts: Parameters and Functions

Following the Berlin Conference of 1884/5, where Africa was literally parceled out among European colonial powers, the territory that is now known as the Gambia fell under British control. It was not until 1889 that the first Anglo-French Boundary Commission arrived to begin demarcating the borders between present day Gambia and Senegal. However, their work was not completed until 1904. The delay was largely due to the on-going Muslim revolutions (the wars between believers and non-believers and also between leaders of these revolts and Europeans – 1850-1901) in the region. In 1893, in the midst of these upheavals, a protectorate system was declared and districts were created out of the former pre-colonial states headed by chiefs that were appointed by the colonial governor. Treaties were signed with most of the local chiefs, who remained under the supervision of Traveling Commissioners.[17] During the period in which the Gambia remained under British rule, the British established legal institutions and apparatuses to administer the colony and protectorate in the name of peace and order. The British established a Muslim court in the colony and "Native" courts in the protectorate.

It should be stated here that the parameters and functions of these courts were not much different from similar courts in other parts of Africa, although the history of how they came to be established in the Gambia and their reliance on "custom" and "tradition" was somewhat

[17] Harry Gailey, *A History of the Gambia* (London: Routledge and Kegan Paul, 1964), 104.

different. Kristin Mann and Richard Roberts indicate that the early histories of African countries differed in significant detail and these differences affected their legal systems.[18] In the interest of tradition and custom, all the colonial territories and subjects had distinctive social and cultural practices making the administration of the courts dissimilar from one colonial region to another. The history of the "Native" courts should be understood within the contexts in which they were created in the region.

The evolution of "Native" tribunals, that is, the eventual codification of customary laws and official recognition of "traditional" tribunals into "Native" courts occurred during a period of increased British involvement in local affairs. Although the British administrators left the task of adjudication with local authorities, the British always maintained their presence through governors and commissioners. In the Gambia, the British initially had two travelling commissioners (a number that was subsequently increased), one for the north and one for the south of the Gambia River. The role of the travelling commissioner was as an adviser to the "Native" courts and the administration of the area under his jurisdiction.

The advent of "Native" tribunals did not mean that the locals had no alternative judicial or dispute resolution mechanisms. Certainly, local people dealt with these "new" trends with apprehension and uneasiness. For instance, as early as 1898, Travelling Commissioner Waine Wright, in his report to the administrator in Bathurst noted that:

> As your Excellency is aware in former times it was of all the old people to congregate when a case was being tried when each individual has something to say with reference to the case on hand. This has proved in some instances a continued hindrance to the native tribunal when sitting and the people have with difficulty been made to

[18] Kristin Mann and Richard Roberts eds., *Law in Colonial Africa* (London: James Currey, 1991), 13.

> understand that only the native tribunal can be allowed to judge the case. However, now that they see that justice is done it is hoped that this hindrance will be a thing of the past.[19]

Wright's statement shows that the establishment of the "new" administrative structures was a slow and difficult process for the European officials because local people continued to be attached to the "traditional" judicial system. For example, in his report of 1903, Traveling Commissioner A.K. Withers, of the South Bank district, noted that "in Western Jarra, only one case was reported and heard by the court, this was a case of assault and was dealt with by me. The absence of court cases in this district does not show that there is no crime, but rather that the people and the head men settle cases themselves."[20]

In a similar report, Travelling Commissioner Waine Wright for South Bank also showed his frustrations by reporting that "The establishment of the native courts in Kiang and Jarra have been carried out but as of yet have not got into working order – but that could not be expected – For whatever the case or dispute they are likely to take days over it. All the headmen and others must have their say."[21] Clearly, Travelling Commissioner Wright shows his disrespect for the "traditional" adjudication systems in place and even suggests that justice would be difficult to attain in these local tribunals. The reports show that local peoples were also grappling with this phase of transition – from "the old order" to "the new order."

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[19] National Records Service (NRS), Annual Reports (ARP), ARP 28/1, June 1899; An attempt to make the tribunal efficient from Travelling Commissioner Waine Wright to Administrator, Bathurst (M.I. Report).

[20] NRS, ARP 28/2, 1903 – 1923, Travelling Commissioner's Report, (South Bank).

[21] NRS, ARP 28/1, From Travelling Commissioner to Administrator South Bank.

Colonial authorities, or the men on the spot, went to great lengths to work with local leaders. In particular, Travelling Commissioner Waine Wright regularly toured his area of administration, imploring with leaders of local tribunals to be steadfast and remain loyal to the British. In his annual report of 1899 to the Governor, Wright reported that:

> With reference to native courts, I have much pleasure in informing your excellency that the people on the whole appreciate these and are gaining confidence daily: In some districts they work very satisfactorily, where the native tribunal have taken the trouble to learn some of the protectorate ordinances – of course there is still plenty of room for improvement, especially in other districts where I am afraid that they still settle cases in their native ways: It has been very difficult to get these courts to understand the ordinances as they can neither read nor write. However, I am pleased to say that they have shown a decided improvement during the past eight months.[22]

Despite these improvements, local people were still struggling to adjust and adapt to the "native" court system. One of the main issues was the question of codification, as according to the Commissioner the "natives" could not read and write. The British colonial officials made efforts to translate the "new" laws into local languages to facilitate understanding of the ordinances and their adaptation in the "native" courts.[23] In one of his reports, Travelling Commissioner Wright noted that:

> With reference to native courts, I have pleasure in stating that the routine is now generally established, more especially in two districts under my supervision. There however remains much to be desired in two other districts. It is to be hoped however that considerable progress will be made next year as then the 'order in council' written in the Mandingo language will be distributed to each tribunal.[24]

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[22] NRS, ARP 28/1,From Waine Wright to Governor Rib Llewelyn.

[23] For translation of religious scripts, See Lamin Sanneh, *Translating the Message: The Missionary Impact on Culture* (New York: Maryknoll, Orbis Books, 1989). Sanneh discusses the translability of the Bible as well as problems associated with the Quran not being translable.

[24] NRS, ARP28/1, MacCarthy Island Report 1898- 99; From Percy Waine Wright To The Administrator, Bathurst.

This is one example showing that efforts were made by colonial administrators at codification and in "translating the message."

Travelling commissioners were also instrumental in not only defining and shaping the legal terrain but also the local social, cultural and political landscapes. In the realm of law, the British colonial agents took it upon themselves to cancel or change decisions made by the "traditional" authorities. For instance, in 1922, Traveling Commissioner Hopkinson of North Bank Province, in his diary entry dated January 26, 1922, reports that "in all the appeals against (Kerewan village, Chief) court so far, l have had to quash the sentences." In another entry dated January 27, 1922, he noted that "At Njawara village in the morning, I held court there, gave a judgment and seized a fine horse from a debtor who has no money at all, nothing at all. I also settled land disputes and presided court in the afternoon."[25]

It is not clear or known whether or not it was the prejudicial opinions that Traveling Commissioners held towards the "native" court heads (chiefs) that were the reasons for overriding the courts' decision rather than poor judgment by the chiefs. For example Hopkinson in his diary, January 26, 1922, remarked about the Kerewan chief, Sisow, "I have had to waste hours over this fool, the complaints against him are numberless, it shows what an idiot he is and what silly things he has always done. He has simply taken the easiest thing and this he will no doubt do to the end."[26] In spite of the impatience manifested in this quote, sometimes the

[25] NRS, CS0 2/531, January 26, 1922; Monthly Diary, North Bank Province.
[26] NRS, CS02/531, April 13, 1922; Monthly Diary, North Bank Province.

Traveling Commissioner thought that certain chiefs were "quite intelligent, talk[ed] to the point and [was] always full of sense."[27]

These examples above show that legal administration of colonies went hand in hand with physical control, which Mamdani expresses as the "containment of subject people." Arguably, physical control which included delimitation and demarcation of village life and borders, had elements of the law since locals could be fined or imprisoned for disobeying orders sanctioned by colonial officers. Colonial agents would determine the physical structure of local villages and settlements as they saw fit, with little attention to "traditional" cultural practices. For instance, in one entry, Commissioner Hopkinson reported "at Sami I visited the causeway in the evening. The people have done a good job of this; it is about three quarters of a mile, all good mud work. I want some additions in some places before the rains, and it should stand well. The causeway provides a straight crossing to Jurunku and will make that part of the country much easier of access." In another entry, he noteed, "at Sarakunda, I went to see if they were cleaning. They were, but, not very energetically. These Jollofs (Wolof) are very careless about letting the grass grow right up to the towns and are simply asking for fires at these seasons. I had the big drum beaten and got everybody out and the work was soon done."[28] These examples do not only show the supervisory role British colonial officials had given to themselves but further illustrate their lack of cultural norms and values of their African counterparts.

Another important task of the Traveling Commissioner was the settling of boundary disputes between villages, disputes over farmlands, and even between the borders of French Senegal and English Gambia. In his reports, Hopkinson noted, "I went to Mbolett village and

[27] NRS, CS02/460, 15/11/1921; Monthly Diary, Hopkinson.
[28] NRS, CSO2/460, March, 8, 1922; Hpokinson.

dealt with cases about the boundaries and laid down some sort of general ruling about prior rights etc, and that these new towns could not expect to increase at the expense of the old ones, their original landlords."[29] These are clear examples of how colonial agents transformed and shaped legal, cultural, and political landscapes of the Gambia. The examples also show the judicial function of the Traveling Commissioners in the protectorate within the ambits of the "native" court tribunal system. The examples further illustrate the advisory role of the Traveling Commissioner over the judgments and decisions of "native" tribunals.

To further cement control of the protectorate, the British introduced the Native Tribunals Ordinance in 1902 and again in 1933. This development was important in transforming the legal landscape in two ways. First, it solidified legal rules and procedures.[30] Second, it established legal boundaries curtailing Africans' legal movement. For instance, the 1902 Ordinance created "Native" Tribunals for each district which had jurisdiction over both civil and criminal matters in the district. Tribunals had a membership of between five and seven selected by the Governor. The size of the tribunal depended on the size of the district such that small districts like Nianija had only three members, while Illiasa had a full house of seven. The Chief sat in the Tribunal as President, and in case of a tie in votes as to a verdict, was given a 'casting vote in addition to his original vote.' In matters of criminal cases, the Native Tribunal had powers to hear cases which the Police Magistrate in Bathurst and other parts of the colony would have heard. In the case of civil matters, the Native Tribunal could hear cases which the Court of Request in the colony would have been able to hear. For the Native Tribunal to be competent to hear a case, the defendant or one of the defendants would have to be a resident in the district. The Commissioner

[29] NRS, CS02/531, April 13, 1922; Monthly Diary, North Bank Province.
[30] See Mann and Roberts, 1991.

could sit on the Native Tribunal and had the power to overturn any decision of the Tribunal which he thought was inappropriate. This is another indication of the powers invested in the Commissioners by the Ordinance.

The Tribunal had powers to adjudicate twenty types of offences, ranging from assaults, defamation, seduction, sorcery and witchcraft to the beating of drums without the permission of the chief or village headmen. Fines imposed by the Native Tribunals were collected by the chief, handed over to the Commissioner, who paid it into the Colonial Treasury. For many districts, such fines formed the bulk of their revenue, and in the 1940s, when District Treasuries were established; court fines formed a source of revenue for district development projects. Court records were taken in local languages using Arabic script before English literate court scribes became widespread in the districts.

According to the 1933 ordinance, the composition of a tribunal should be composed of the chief and two members and should hold court sessions at least twice a month. At the end of every month, the tribunals would continue to report cases to the commissioner. Fines assessed in criminal cases will still be paid to government through the commissioner and it is still open to the Tribunals to award compensations out of fines in such cases as assault and seduction.[31]

In addition, the tribunal was to keep a book showing all fines paid. If the tribunal thought a man was too poor to pay, it could make a note in its book. Also, a warrant would come from the Governor, telling the Tribunal the places over which it had power, what kinds of cases they could try and explaining other matters. In so far as the tribunal had this warrant its powers were legal. In case the tribunal could not do carry out its duties according to the letter and if not made

[31] NRS, CSO2/1375, 1933; Native Tribunals Ordinance.

better on the advice of the commissioner, could mean that the Governor could change the powers of the Tribunal.[32]

The "Native" courts had powers to try both civil and criminal cases but not cases considered repugnant such as murder and serious bodily harm. In all matters, civil or criminal, the tribunal was to use the procedure of Muslim law or "Native" Custom except where they were trying cases for offences against the law of the colony or protectorate. The tribunal should try criminal cases for crimes which have taken place in their districts or partly in their districts. In civil cases, the cases should be heard by the tribunal of the district in which the defendant lives or by that in whose district the dispute arose. But land cases must be heard by the tribunal of the district in which the land is situated. It must be added here that the governor retained the power to promote or demote a tribunal from one category to another depending on the quality of the tribunal, as he saw necessary. In criminal cases tribunals could inflict imprisonment or corporal punishment. Imprisonment and fines must always be "sufficient" to the crime. In such cases, the commissioner could reduce a sentence but would only do so if he feels the punishment to be cruel or unjust.[33]

The ordinances also gave power to any person to ask to be tried by the commissioner, but if the commissioner wished he could send that person back for trial by the tribunal. Also, any person to be tried could object to a certain court member hearing the case. If anyone does make this objection, the tribunal could find out why he objected and if satisfied, he had a good reason and must order the member not to give a decision on the case. This could mean that the case would have to be adjourned till a new member was found. More importantly, it could also mean

[32] NRS, CSO2/1375, 1933 ; Native Tribunals Ordinance.
[33] NRS, CSO2/1375 ; Native Tribunals Ordinance.

that the commissioner could use his powers to try any case and impose fines as he saw sees necessary without the involvement of any member of the tribunal. The ordinances could also create more friction and tensions in the communities because litigants could take advantage of the promulgations to accuse members of the tribunals of bias, especially if there had been past disagreements between these litigants and some members of the tribunals.

Examples of cases which could be tried by the tribunals fall under the following categories:

a. Criminal cases

1. Theft
2. Assault
3. Seduction
4. Abusive Language
5. Escape
6. Disobeying a lawful order of a native authority
7. Any cases formally allowed to be tried by a tribunal.[34]

The efficiency and prestige of the Native Tribunals sitting as criminal courts strike a new court to the protectorate as being of a high order but as civil courts their prestige is somewhat dimmed by the frequency of judgments given out but never enforced with some judgments having remained as long as three and four years.[35] It would seem that at their inception, "Native" Tribunals had been busy adjudicating between litigants and as result, many cases were left unattended.

b. Civil cases

1. Death
2. Marriage
3. Divorce
4. Guardian ship
5. Dowry

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[34] NRS, CSO2/941, March 31, 1932; The view and opinion of colonial civil servants of the Native Courts, Quarterly Report, G. Nuun to Colonial Secretary.

[35] NRS, CS02/941, March 31, 1932; The view and opinion of colonial civil servants of the Native Courts, Quarterly Report G. Nuun to Colonial Secretary.

6. Parentage[36]

The issue of civil cases in the "Native" court was mainly of debt and these were of two types; those between two natives and those between a native and a trading firm. For the first, the fact of whether a judgment had been enforced or not was not of great concern, the plaintiff could have the satisfaction of having his debt recorded. Whereas the latter were not interested in having debts recorded, but in requiring the money to be paid to enable them to square their accounts with the firms. Here, it can be seen that Europeans were keen to support traders and trading firms as trade constituted European interests.

In 1935, in another development, a provincial court ordinance was enacted to try criminal cases in the protectorate to be presided over by the Commissioner, Assistant Commissioner or Police Magistrate. The Provincial Court Ordinance set out the grounds upon which the supreme court might order the transfer of a civil case pending before a provincial court to another court; such an order would tend to the "more speedy and satisfactory administration of justice."[37]

However, a few years after the enactment of the ordinance, it was criticized by a colonial legal adviser that "owing to their length cases heard before a provincial court occupy a considerable amount of the time of the Commissioner who has many other matters to attend to. Secondly, some cases before a provincial court are of complex or difficult character which necessitates the professional experience of the Police Magistrate."[38]

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[36] NRS, CSO2/ 941, March 31, 1932; The view and opinion of colonial civil servants of the Native Courts, Quarterly Report G. Nuun to Colonial Secretary.
[37] NRS, CSO3/321, 15/10/1937; Protectorate Subordinate Provincial Courts.
[38] NRS, CSO3/321, 15/10/1937; Protectorate Subordinate Provincial Courts.

Table 2: Summary of cases heard before Native Tribunals, 1943[39]

District	Criminal	Civil	Total
Fulladu West	66	32	98
McCarthy Island	34	10	44
Sami	26	35	61
Niani	31	87	118
Nianija	9	12	21
Western Niamina	5	2	7
Eastern Niamina	2	10	12
Niamaina Dankunku	13	5	18
Lower Saloum	43	23	66
Upper Saloum	20	9	29

As the table shows, the "native" courts were busy particularly in Fulladu West, McCarthy Island, and Lower Saloum districts. What is interesting about these numbers were the amount of criminal cases. At the outset, "native" tribunals were not given powers to deal with criminal cases. Another issue that could have made the courts popular was the distance to Bathurst where criminal cases were previously dealt with. Also, the "native" courts could have been more lenient in their judgments because of the Europeans' presence.

From the records, the Provincial Courts became busy immediately after they were set up. For example, for the first quarter of 1936, in the North Bank Province, the Provincial Court dealt with 17 criminal cases and 7 civil cases.[40] The colonial authorities were particularly concerned about the size and jurisdiction of Native Tribunals. For example, in Upper Saloum the Travelling Commissioner advised that the number of members should not be more than was necessary for the efficient administration of justice and a panel should not be swollen for political reasons. "The local areas of the Native Tribunals are generally speaking of small local jurisdiction and therefore tend to be far too parochial, and the members of the Tribunals are often intimate of the

[39] NRS, ARP 34/1, 1943; Divisional Report.
[40] NRS, CS02/1589, 1936; North Bank Province Report.

parties to a case before they come to adjudicate and a stranger cannot therefore always be sure of justice."[41] These were some issues which had an impact on the dispensation of justice, particularly considering that most of the districts were small, basically close knit extended families.

Table 3: Native Tribunal cases for various districts, 1945, 1946[42]

District	Cases 1945	Cases 1946
Kombo North	-	132
Kombo St Mary District	-	264
South Bank Districts	405	372
North Bank Districts	373	315

An important aspect of the courts was the issue of court fees and fines. According to the "Native" court ordinance, there were no court fees but under the regulations made under the protectorate ordinance, a native tribunal could require a complainant or litigant to deposit a sum not exceeding 4 shillings to cover the cost of service of any summons or any preliminary expenses and after the case was decided may order costs to be paid to cover witness expenses. Court fees are intended to meet the cost of any clerical staff of the court, but since no such staff was required in the Native Tribunals, therefore no expenses were incurred and no need for court fees.[43]

[41] NRS, CS03/280, 14/8/1935; Acting Colonial secretary to Commissioners.
[42] NRS, ARP34/4, 1946; Divisional Report.
[43] NRS, CS02/941; Regarding Native Tribunals, Financial.

In a letter from Governor Palmer to Secretary of State for Colonies, London, the governor suggested that members of the 37 tribunals in the protectorate be paid regular salaries rather than being paid for court sittings. He proposed in each tribunal, the president and three members including the clerk of the tribunal should receive salaries fixed according to the grading of the tribunal into grade A or B, depending on the volume of cases and the quality of the work of the tribunal. E.g. Grade A Tribunal – President £12 per annum and each member £3 per annum. By compensating chiefs and clerks as salaried workers the British were concerned that these "Native" tribunals could be effective and productive but even so, the British could count on the support and loyalty of the head chief, other members of the tribunal, and the clerk. In short, the British were ensuring allegiance to the colonial state. Also, by dividing the tribunals into grades, the British were also setting standards by designing what was important and what was not important.

These examples show that it was the British and not the Africans who could make final decisions about particular cases. While the composition of the "Native" courts on paper consisted of the head chief as president and at least three other headmen, in practice the traveling commissioner could preside over the court in whatever district he found a court sitting or a case pending. For instance, in 1903, Travelling Commissioner Withers commenting on the court in Eastern Jarra noted "nine cases were brought before the Court in this district, none of them serious; all of these were heard by me sitting with the Native Court."[44]

[44] NRS, ARP28/2, 1903 – 1923; Travelling Commissioners Report, South Bank.

The Dual Legal Terrain: *Sharia* and English Law

The administration of the Gambia colony and protectorate like many British colonies with Muslim subjects had two ways of administration. In colonial Gambia, in addition to a separate legal system for Muslims and non-Muslims in the colony, the British also had a dual legal system in the protectorate or two judicial systems: the "Native" courts, which were a mixture of customary laws, *sharia,* and English law.

As a result of the uneven legal terrain, at times issues at hand were not always clear cut especially when it impinged on English law. For many Africans, the boundaries between English law and *Sharia* were not clear and often complex and confusing. A case that shows the complexity of the jurisdiction of the Muslim court and English law courts regarding Muslim marriages in the colony concerns whether a particular act was bigamy or not. Under English law bigamy was considered a criminal offense in colonial Gambia while it could not have been an offense under *sharia*. Under s*haria*, for another marriage to be valid, the previous one must have been dissolved.

According to one case, on Tuesday, February 11, 1936, before His Worship, I.C.C. Rigby in the Police Court at Bathurst, the accused Fatou Ture, a Muslim woman was charged under the criminal code that she did, sometime between the 1st day of October 1934 and the 2nd day of January 1935 in the town of Bathurst in the colony of The Gambia marry one Demba Danso during the life time of her husband, Almata Suso. The preliminary investigation started on Monday February 10, and after the close of the prosecution case, the defense submitted there was no case to answer on the grounds that the evidence did not satisfactorily prove that the marriage between the accused and Almata Suso was valid according to Muslim rites. Further, it was not a

valid marriage as known and recognized in English law or by the criminal code to support a charge of bigamy.

The Police Magistrate judged that he thought there was a primafaci case and that he was going to commit the accused to the criminal sessions of the Supreme Court. Council for the accused, Mr. Davidson Carroll, submitted that there was no case to go to the jury and that there was no evidence that the accused had committed any offense of which she could be lawfully convicted on the information upon which she was being tried. Mr. Caroll reasoned that:

1. The section of the Criminal Code 153, under which the accused was charged, did not apply to Polygamous marriages.
2. If it did, the prosecution had failed to prove that the first alleged marriage was valid, even in Muhammedan law.
3. The evidence of the prosecution showed that there had been what amounted to a valid and effective release.
4. The ceremony of the second alleged marriage by reason of the fact of it having taking place in Bathurst, is not a "ceremony of marriage" known to or recognized by the laws of the colony as capable of producing a valid marriage.[45]

This story illustrates that the relationship between the English law and *sharia* law is at best precarious because it is sometimes difficult to understand where one ends and where the other starts. This particular case did not stand a chance in the English courts because according to the Christian Marriages Ordinance of (1882), the only marriages recognized under English law were Christian marriages done in Bathurst and the litigants were Muslims. Hence, why were such cases between Muslims on marriage not committed to the Muslim Courts? Were the complainants aware that the English court would have been more sympathetic to their case or did they simply overlook the Muslim court as capable of such arbitration? Moreover, what do such

[45] For a full version of this case, see The Gambia Echo, March 2, 1936, 3.

cases tell us about the relationships of both the European and Islamic laws and how these laws were perceived by the local populations?

The obscurities in the English law when compared with Islamic law, made some Africans attempt to negotiate this dual legal terrain in order to exploit its limitations. For instance, in 1968, an appeal was brought before The Gambia Court of Appeal involving a monogamous marriage and a subsequent Islamic marriage to another woman - whether the relationship with a second wife constitutes adultery, thus providing ground for dissolution of the first marriage. In 1956, the appellant, Abdoulie Drammeh (the husband) was lawfully married to the respondent, Joyce Drammeh (the wife). Both parties then professed the Christian religion. The marriage took place in Liverpool, England. In July, 1966, when both parties were living in and were domiciled in The Gambia, the wife presented a petition in the Supreme Court of the Gambia for the dissolution of the marriage. Her petition was submitted on the grounds that her husband had committed adultery with Mariama Jallow (co-respondent). The husband and the co-respondent had gone through a ceremony of Muslim marriage in 1966. The case was heard by the Chief Justice, who held that the wife was entitled to have her marriage dissolved on the ground of her husband's adultery committed before the date of the petition. A decree *nisi* was pronounced. The husband appealed to The Gambia Court of Appeal. The appeal was dismissed.[46] A similar case brought before the Supreme Court of the Gambia involved the then Prime Minister, Sir Dawda Kairaba Jawara vs. his then wife, Lady Augusta Jawara. According to the case, the Prime Minister intended to divorce his wife, Augusta, following his return to Islam and her refusal to be converted. Earlier in 1967, the Gambia Court of Appeal had allowed an appeal by Lady Jawara

[46] Judicial Committee of the Privy Council (Great Britain), "Abdoulie Drammeh vs. Joyce Drammeh," *Journal of African Law*, 14, 2 (Summer, 1970): 115-120.

against a lower court ruling allowing the Prime Minister's petition for divorce. One of the results of this legal tussle was the enactment of the Dissolution of Marriages Act, 1966 which was meant to make Sir Dawda's divorce claims a legal fait accompli.[47]

These stories demonstrate how litigants navigated the dual legal terrain of Muslim or *Sharia* law along with the British Christian law in an attempt to achieve a legal way out of untenable marriages. The stories further illustrate the complexities that arise from religious based marriages especially when one of the spouses wishes to revert to their former religion in order to enter into a polygamous marriage life. A legal dilemma faced by colonial rulers was the desire to implant Western values while at the same time maintaining aspects of Muslim or customary law in the colonies.

"Native" Tribunal at Work: A District Court Cases

To fully understand the types of litigations that were brought before the "native" courts, one needs to understand the everyday disputes in the district court of Niamina, about 120 kilometers from Banjul. The availability of transcripts from this court offers insight into the applicability of the law and how the court actions were performed.[48]

The types of civil litigations dealt with in the "native" courts were not different from those in the Muslim court in Bathurst. However, as discussed above, the "native" courts applied both *sharia* and English law while the Muslim court used only *sharia*. The issues brought before the "native" courts include matrimonial issues, such as marriage, divorce, child custody, and

[47] The Gambia Echo August 7, 1967, 2.

[48] These court procedures could be seen as performances where litigants dramatize or reenact scenes of confrontations in court with appreciations from the audience.

property right issues. Procedures in these courts were usually long and detailed because of the attention the court sessions and the cases generated. The courts were usually held on Wednesday or Friday, typical days of rest for farmers. Also, because of kinship relations, court rooms were usually well attended by relatives as well as the curious. As late as the 1970s, a combination of these factors made court rooms a site of spectacle and performance.

For instance, one such case took place in the "Native" Court of Niamina Sambang Village. According to the particulars of this case, on October 2, 1971, the complainant Aboulie Sowe of Sareh Pateh village appeared before Chief Bodejo Bah and swore on the Quran that the accused, Samba Jallow came to his compound and invited the complainant's wife to meet with a stranger who was lodged in his (Samba Jallow's) compound. The woman at first refused the invitation, but Samba Jallow persisted and finally convinced the woman to meet with the accused in his compound.

The court called on Principal Witness 1 (PW1), a younger brother to the complainant. In a lengthy dramatic speech, PW1 recounted that on the day in question, he went to farm but came home early. On his arrival, he did not find his brother's wife at home. He then went to Samba Jallow's (the accused) compound and went into a room where Samba's visitor was lodged. In the room, he found his brother's wife and Samba's visitor lying in bed. According to PW1, he locked the door from the inside with the man and the woman. Then, he shouted and the accused and several people came to the scene. PW1 further narrated that he seized his brother's wife's head-tie and the visitor's bicycle as articles of evidence which he tendered in court. In his

testimony, PW1 stated that a few days after the incident, the accused and his wife attacked him. The court procedure went as follows (verbatim):[49]

Question to PW1

q. Where were you when accused and wife were insulting?
a. In my compound

q. You fought with the accused wife, why not that Senegalese man?
a. Well, is just like that.

Question to the complainants wife
q. You heard all what they say?
a. Yes

q. What all said is true or not?
a. Yes it is true

q. What they said accused came to take you from your husband's compound?
a Yes. Accused told me that I came for you, I told accused that I am afraid to go because my husband is not here.

q. They caught you with a man?
a. Yes. Accused came for me and took me to his compound.

q. He told you if you have chance you go?
a. Accused came to fetch me to go and meet Abdou, the man whom I was caught. Have not been accused came for me, I should have not gone.

q. Did you know that man?
a. Yes, he was my friend.

The accused, who had sworn on the Quran, stated that "complainant's wife came into my compound with PW2 and PW3 and asked me whether I sell French kolanut. I said no and when they were going out, complainant's wife came back and met my stranger Abdul in his house. I saw her when she was going inside that house in my compound that is all I have to say."

[49] Deliberately, I produced the questioning procedure verbatim so as to show the problems of interpretation and translation from local languages to English. The interpreters were faced by difficult issues of interpretation.

Questions to Accused:
q. Did you go to the lady's compound?
a. Yes but not to call her

q. Did you see the lady going into the house where Abdul is?
a. Yes, I saw her.

Alagie Sowe PW2, who had sworn on the Quran, stated that "I know complainant and PW1 and the lady. What happened is I left Ngawor and came to see my friends but complainant was out then. PW1 told us that he is going to work on his farm. PW1 left us there and accused came and ask us where is complainant. The lady said he is not here. The lady then went into accused compound. That is all I have to say."

Question to PW2
q. Where was the accused?
a. Inside the complainant's compound.

Jawo, PW3, who was also sworn in on the Koran confirmed that he knew the woman and stated as follows:

> I left Ngawor and came to Sare Pateh and suddenly I went into complainant's compound but complainant was not there. I only meet PW1 and wife. I was there and PW1 told us that he is going to his farm and he left me there with PW2 and the lady. Accused came into the compound and asked complainant's wife if her husband has come or not. The lady said she has not yet come. Accused later went and complainants' wife said you keep something for me. I am coming. We told the lady that we are going home. That is all I know to say.[50]

The court found accused guilty on the grounds of doing something that can cause a divorce between couples and also helped Adbul (the man caught with complainants wife) to escape to Senegal. A fine of D50 (Gambian Dalai) or else five months in the prison with hard labor was

[50] NRS, 1970/71; District Court Records, Niamina.

imposed on him. The court strictly warned the lady not to do such a thing again. D10 compensation was given to the complainant.

This case shows not only how law works in these "native" courts but also the everyday lives of Gambian women and men especially their navigation through the courts. In these courts, some of the most recurrent cases were neglect, abuse, and impotency which usually resulted in divorce by mutual consent or out of court settlements. For example, on December 1, 1971, Kutu Konteh (plaintiff) came before the Tribunal of Niamina West and testified against her husband for negligence. The husband, Sherifo Saidykhan admitted the claim. He further expressed before court that he had forgiven his wife completely but they had a daughter between them who was two years old and the plaintiff was ready to give back the child to him; a letter had been written to that effect. Therefore divorce was granted by court.

In cases where both plaintiff and defendant admitted guilt, the court proceedings were short and straight forward. In a relevant example, on August 3, 1971, Bambi Konteh (plaintiff) of Sambang village brought a case of divorce due to impotency before the tribunal of Pinai Fulla Kunda village against her husband Kuku Njai of Brikama. The case was withdrawn and settled out of court peacefully. This was due perhaps to the stigma attached to impotency in society.

Often, the court transcripts reveal questions of how customary law was applied or affected the outcomes of some cases. In the case below, the chief and his council put into consideration "traditional" or "customary" practices of marriage.

On September 5, 1970, Sonanding Camara came before the Niamina West District Court and took oath against her husband Kebba Sarr and reported that one day she cooked soup and put some palm oil in it and her husband suspected that she added something in the soup which he did not authorize. Sonanding is seeking divorce because of a fight she had with her husband over

allegations by her husband that she was running away with another man. Sonanding claimed that she suffered some internal but no bodily wounds as a result of the fight. After unsuccessful attempts by the court to mend the relationship, a divorce was declared. Sonanding was asked to pay £16 as cost of dowry and £2.58 as court fee not later than September 10, 1970. When the divorce was declared, the court was informed of Sonanding's pregnancy and she was warned not to remarry before she delivered the baby.

However, as soon as divorce was pronounced, Kebba Sarr turned to the court and summoned one Bubacarr Camara accusing him of ending his marriage by planning to run away with his wife. Kebba, who was sworn to the Quran, indicated that Bubacarr visited his compound twice.

> At first, he brought with him five kola-nuts which my eldest wife presented to me. I replied that at home there is something behind giving five kola-nuts to elders. Accused then came to me and we greeted each other. He said that Sonanding's relative is married to his landlord. I gave him a house but did not sleep there and instead slept in Sonanding's house. After spending a week he asked my permission that he wants to return home. Sometime later, he arrived again in my compound. When he entered Sonandings house, Sonanding began packing all her belongings to leave. When I saw what was going on, I called Sonanding and questioned her whether she was under the responsibility of someone or not. This brought a fight between us and Sonanding summoned me that she wanted a divorce and the divorce was granted.[51]

The court called Bubacarr Camara, the accused, who sworn to the Quran testified that he came there with five kola-nuts to see Isatou Sanyang (the complainant's daughter) in order to marry her. Accordingly, he gave the five kola-nuts to the complainant's eldest wife because he was ashamed to face the accused and talk to him about taking his daughter's hand in marriage. Bubacarr narrated that at night he requested to take a shower and was given a house to go but the room was locked. While he was waiting, Sonanding called him into her house. However, the

[51] NRS, 1970/71; District Court Records, Niamina.

court interrupted Babucarr because the court believed that "accused was narrating cock and bull story." The court then interrogated Babucarr:

Questions by Court:
q. Do you want to marry complainants' daughter Isatou?
a. Yes

q. When you go to the compound whom do you meet?
a. I used to meet the women.

q. Were you lodged in a special house?
a. Yes

q. Why is it that you don't inform complainant that you want to marry his daughter?
a. Because I am ashamed of him.

q. Any mediator?
a. No

q. On your first trip did you tell complainant anything?
a. No

q. What of your second trip?
a. Nothing.

The court, in its judgment found Bubacarr guilty of being the cause that ended Kebba and Sonanding's marriage, concluding that: (1) The accused never informed the complainant that he wanted to marry his daughter. (2) Whenever the accused went to the complainants' compound he used to go and meet only the women. (3) There was no mediator between the complainant and the accused. (4) When given a house, the accused never used it but instead used Sonanding's house. These behaviors according to the court were not proper procedures for engaging a wife in rural areas. The court imposed a fine of £8 on Bubacarr as a deterrent and failure, as well as a term of imprisonment of two months with hard labor.

Sometimes, the court proceedings were quick, particularly when the accused accepted the charges for fear of stigma attached to the issue in question or was unable to control the woman.

For example, on November 15, 1965, Kunkung Sanneh appeared before the court of Chief Musa Sawaneh of Niamina and took the oath against her husband Musa Jadama. She complained that she did not like Jadama anymore and that she wanted a divorce. The husband, Jadama in his response stated that "so far she does not like me, I don't like her also." Jadama further informed the court that as Kunkung was his uncle's daughter, he did not need repayment of the dowry.

On December 8, 1965, in a similar divorce case, the complainant Manjira Sonko of Pinai village swore on the Quran against her husband Manbaro Dampha, complaining that she did not like Manbaro anymore because Manbaro did not look after her in the right way. When questioned, Manbaro replied that "so far she does not like me; I shall be very pleased her parents can give me the money I gave them for her." The wife agreed to a dowry of £14 and she paid accordingly.

Conclusion

Colonial legal advances transformed both the legal and physical terrain of what is now Gambia. The introduction of "Native" courts, ordinances to sanctify the courts, and the physical presence of British officials on the ground curtailed African legal practices to deal with local administrative matters. Scholars have discussed the nature at which colonial officials hurriedly put together European and African legal systems and appointed leaders whom they saw as fit to run these legal institutions. For instance, Sally Falk More notes that these local courts were to be run by Africans and would apply African "customary law" but were to do so in a manner consistent with basic British legal principles and the objectives of colonial administration.[52]

[52] For example, see Sally Falk Moore, 'Treating Law as knowledge: Telling Colonial Officers What to Say to Africans about Running ''their own'' Native Courts,' *Law and Society Review*,

Certainly, the advent of "Native" tribunals did not mean that the local inhabitants had no alternative judicial or dispute resolution mechanisms. For example, in his report of 1903, Traveling Commissioner AK Withers, of the South Bank district, noted that "in Western Jarra, only one case was reported and heard by the court, this was a case of assault and was dealt with by me. The absence of court cases in this district does not show that there is no crime, but rather that the people and the head men settle cases themselves."[53]

Also, although the composition of the "Native" court, while on paper consisted of the head chief as president and at least three other headmen, in practice, the traveling commissioner could preside over the court in whatever district he found a court sitting or a case pending. For instance, in 1903, Travelling Commissioner Withers commenting on the court in Eastern Jarra noted "nine cases were brought before the Court in this district, none of them serious; all of these were heard by me sitting with the Native Court."[54] Arguably, this indicates an unequal relationship which the colonial officials designed and executed. The local members of these courts had little room to implement their own decisions.[55]

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26 (1992): 11-46, 12. Sally Falk Moore, *Social Facts and Fabrications: Customary Law on Kilimanjaro,* 1880-1980 (Cambridge, I986), 88. Moore earlier suggested that the introduction of colonial law promoted cultural transformations among colonized peoples, yet also established limits to these transformations, and provided opportunities to resist and negotiate colonial power. Thomas Spear, "Neo-Traditionalism and the Limits of Invention in British Colonial Africa," *Journal of African History*, 44 (2003), 3. Similarly, Spear's analyses of the 'making of customary law' have shown how colonial authorities, missionaries and African elders cobbled together local customs, colonial law, Christian morality and administrative regulations; codified them; gave them penal and corporal sanctions; and made them enforceable by authoritarian chiefs, contrary to negotiated pre-colonial practices.

[53] NRS, ARP28/2, 1903 – 1923; Travelling Commissioners Report, South Bank.

[54] Ibid.

[55] The Mandinka describe such unequal relation in a proverb, *"I ye kuŋo di moo la, I ye neŋo muta,"* (Literally, you give the head to somebody but you continue to hold on to the tongue).

However, it should be noted that at times officials recognized the work of some local authorities as functional and efficient. Traveling Commissioner Hopkinson of the South Bank Province, remarked approvingly, in 1913, on the work of the Native Courts. He penned, "The 'native' courts as a whole do their work well, some very well indeed, but even that done by the worst of them is fairly satisfactory and quite suited to the needs of the country. Luckily crime, that is serious crime, is very rare and the greater part of the cases which come before the Native Courts are assaults, abusive language and the like on the criminal side, inheritance, marriage, and dowry disputes on the civil."[56] The commissioner further recognized the inability of colonial officials due to their lack of contextual knowledge to deal with the intricacies of local disputes. Hopkinson notes that "the complicated situations and claims which so frequently arise in connection with the inheritance, marriage dowry disputes are much better and more easily dealt with by a good Native Tribunal than by a European, who however long he may have known the people can rarely hope to fully understand all the intricacies of these cases."[57] Admittedly, this was at a time when colonial officials lacked contextual norms and values of these societies.

European colonial officials also needed to understand the cultural context and social relationships. At times, popular feeling and dissatisfaction in the colony could find their way into the court rooms and influence the outcome of cases, particularly cases tried by judge and jury in the supreme court of Bathurst. For instance, in a letter from Governor Armitage of the Gambia to Secretary of State for Colonies, dated the 18 April, 1924, describes a situation in which a man suspected of stealing a pair of trousers from a European's house in Bathurst was acquitted and

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This is to say that though the colonial officials put the local chiefs and elders in positions of authority, all the important and major decisions remained in the hands of the European officials.

[56] NRS, ARP28/2, 1903 – 1923; Travelling Commissioners Report, South Bank.

[57] NRS, ARP28/2, 1903 – 1923; Travelling Commissioners Report, South Bank.

discharged by a jury comprising ten Africans and two Europeans, despite the overwhelming evidence of the guilt of the accused.

For this case, the prosecution had two witnesses, Mr. Mathias, the plaintiff, and his house boy. The only witness for the defense was the accused, who said that the plaintiff invited him into the house and took the trousers from under the table and told accused that he had stolen them and then had the accused arrested by the police. Consequently, the legal adviser made an application to the Supreme Court for cases to be tried by Assessors instead of Juries. This was because in the opinion of the Legal Adviser, Bathurst juries may have been comprised by ethnic and racial factors in consideration "to make them indulge in such vagaries."[58]

The need of understanding cultural contexts and social relations were important to colonial officials, even though they did not have the requisite numbers and knowledge to deal with it. Equally, issues such as social relations, social status, and economic status of the accused were important to local communities as it usually affected the outcome of court cases. In a 1909 South Bank Province report, Traveling Commissioner Lt. Hugh F. Sproston noted that "the courts as a rule appear to have done their work satisfactorily though in some instances, the members are rather inclined to be lenient in cases where it is known the prisoner is a poor man. I have however, pointed out to them that the object of punishment is not so much against the individual personally but to act as a deterrent to others who are inclined to commit similar offences."[59]

In fact, such examples show the influence of tight knit social relationships on the outcome of cases in the Native Tribunals or in the courts. Many of the "Native" Court

[58] NRS, CSO3/76 –1924; Trials by Assessors.
[59] NRS, ARP 28/2, 1903 – 1923; Travelling Commissioners Report, South Bank.

jurisdictions were rather small and such that acquaintances or relationships could make the dispensation of justice impartial. The nature of relationships such as caste systems further complicates the ability to dispense justice. For instance, in cases where a chief presides over a case and inflicts a fine on an offender who belongs to the griot caste (the traditional bards), the chief is obliged by tradition to pay the fine on behalf of the griot. In other cases, if a chief fines a poor person, the griot could implore the chief to pay the fine saying, "you know this person is poor but yet you put such a heavy load on him."[60]

[60] Interview with Jali Shaikou Suso, November 18, 2010, Banjul. The griot's words in Mandinka is "*I ye a loŋ ko, feŋ te ñiŋ bulu, I ka naa ñiŋ dunu baa la a kaŋ.*"

Conclusion

The 1928 qadi crisis that erupted between Bathurst Muslim elders provided a way in understanding the social history of the Gambia and the role of the Muslim court in the adjudication of justice in the Gambia colony and protectorate. The crisis concerned allegations against the Imam of the Bathurst Mosque for committing the offense of condoning adultery in officiating at the baptism of the illegitimate son of a Muslim elder and legislative council member, which, according to a section of the Bathurst Muslim elders, was a capital offense under Islamic law. Though the case was thrown out of the Muslim court, it sharply divided the Muslim community into factions. The incident brought together seemingly different social, political, and economic constituents, people from different social and cultural backgrounds. It showed the extent to which the British engaged with Africans and how they influenced the legal landscape by introducing institutions and laws which aided or curtailed Africans' legal movements especially, women. It is especially important to note that the laws allowed a cross-section of women to come forward with their domestic problems.

The case showed not only Muslim elders' role in the development of Bathurst as a colonial city but also in the creation of legal institutions. Africans in Bathurst demanded the establishment of a Muslim court because they wanted their cases to be heard by a qadi rather than the European court, which they saw as Christian. Their demand has implications for understanding colonial rule. Scholarship on colonial administration in Africa tends to characterize the episode of colonial rule as one in which Europeans imposed new administrative structures on reluctant and passive Africans.[1] In the Gambia colony, by demanding an

[1] For further discussions on colonial rule on Africa, see Michael Crowder, *West Africa Under Colonial Rule* (Evanston: Northwestern University Press, 1968); Peter K., Tibenderama, "The

alternative judicial system, the Africans were instrumental in shaping the legal terrain. The Europeans responded by accommodating Muslim demands because they were interested in the smooth running of the colonial state, free from Muslim reprisal. One of the key concerns of the Muslims was the building of a Muslim court and a secular school where Muslim children could be educated. In order words, Muslims wanted a spiritual space, but also wanted to be part of the social and economic benefits ushered in by colonial rule.[2] The Bathurst Muslim elders also wanted to be like their Christian cousins who were benefiting from British education and rule by being part of the colonial machinery.

However, in spite of their role in the day-to-day running of the Gambia colony, the historiography of Gambia has largely ignored the courts in analyzing the development of Gambian society and in examining women's issues. Instead, studies of Islam and Muslim communities in what became the Gambia colony and protectorate tend to focus on the role of clerics in the spread of Islam and the nineteenth century religious uprisings.

Irony of Indirect Rule in Sokoto Emirate, Nigeria, 1903-1944," *African Studies Review,* 31, 1 (Apr., 1988): 67-92.

[2] David Robinson, *Paths of Accommodation: Muslim Societies and French Colonial Authorities in Senegal and Mauritania, 1880 – 1920* (Athens, Ohio: Ohio University Press, 2000), 76 and 204. The process of engagement well illustrated in David Robinson's notion of accommodation, dealt mainly with Islamic leaders and colonial agents. In *Paths of Accommodation* Robinson examines the ways in which Muslim leaders of Mauritania and Senegal negotiated relations with colonial authorities of French West Africa in order to preserve autonomy within the religious, social and economic realms while abandoning the political sphere to their non-Muslim rulers whilst subjecting themselves to the rule of France. A significant way in which "the alliance between these Muslim leaders and French colonial agents was negotiated was for French agents to secure decrees (*fatwa*) from the leading authorities of Mecca saying that submission to European rule was acceptable for Muslims." For example, Alhagi Malick Sy (1854 -1922), who by 1902 established himself at Tivaouane, the heart of the groundnut basin in Senegal, showed his allegiance to the French and endorsed French power: "Support the French government totally. God has given special victory, grace and favour to the French. He has chosen them to protect our persons and property. This is why it is necessary to live in perfect rapport with them."

In recognizing the recent historiographical trends in using judicial records to better understand African social history, this dissertation addresses some of the important issues that have been neglected in Gambian historiography. It discusses some key legal, social, and political changes that followed the introduction of colonial rule and the establishment of the Muslim court and how they impacted the position of women. As I have demonstrated, although control and exploitation of women, men, and young men was the overriding interest of colonial rule, the cases I presented reveal that the court provided the opportunity for women to bring cases against abusive and controlling husbands and parents, and win some rights within the household, despite the entrenched patriarchal construction of society. A section of Gambian women in particular went to court because the court responded to their queries about questions of a husband's duties to his wife.

For example, on February 26, 1907, Hadijatu Njie appeared before the qadi of Bathurst claiming that her husband denied making her pregnant and therefore refused to give her support. She also reported that her husband was abusive to her by seizing her pair of gold bangles. The husband denied maltreating her, and wanted her to return but she chose divorce, which the qadi gave her. The qadi relied on the statement of Sheikh Khalil, "release is lawful."[3] By relying on such codes in the Islamic law, women like Hadijatu publicly benefited from the courts and were able to separate themselves from their husbands. In "traditional Gambian societies, women were supposed to be tolerant and bear the wrath of abusive husbands. It was and is still regarded as a shame for the wife to go public with matrimonial problems. However, the courts, backed by legal injunctions, also frowned on abusive marriages and negligent husbands that made women like Hadijatu pass the blame onto their husbands in public. As examined in Chapter three, in Islam a

[3] Muslim Court Records, Banjul the Gambia, Qadi's Office, Banjul.

man has a moral and legal responsibility to support his family. The remedy for non-support for a woman is divorce, which is granted by an Islamic court and generally is not difficult to get."[4] In essence, as Allan Christelow notes, "the choices and strategies of litigants and the existence of potential alternative sources of judicial authority in the form of the qadi's court, the British administration, and the British courts all had influences in shaping legal realities."[5] The example shows that women like Hadijatu were able to take advantage of the creation of the court and the presence of the Europeans to find effective ways of confronting abusive husbands.

Undeniably, colonialism and colonial rule negatively impacted Africa and Africans in many ways. However, during these periods, colonialists also waged war by legal compulsion on what they deemed as outdated forms of bondage (existing forms of slavery, concubinage, child marriage, for example). These legal contexts, according to Ismail Rashid, gave opportunities to women to find new means of self-realization.[6] In colonial Gambia, some of these laws include the enactment of the Muhammedan Law Recognition Ordinance 1905, the Muhammedan Court Rules 1917, and the Muhammedan Marriage and Divorce Ordinance 1941. These enactments strengthened women's position in society, particularly in the courts, because the British could call on the sitting Muslim judge, or even search for precedence in other Muslim countries, when they were doubtful of a judge's ruling. Gambian women, like women in other African colonial settings, took advantage of the laws and undercut male authority.

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[4] Barbara Gallaway, *Muslim Hausa Women in Nigeria: Tradition and Change*, (Syracuse: Syracuse University Press, 1987), 39. See Suratul Nisa, The Holy Quran, (IV).

[5] Allan Christelow, eds., *Thus Ruled Emir Abbas: Selected Cases from the Records of the Emir of Kano's Judicial Council,* (East Lansing: Michigan State University Press, 1994), 10.

[6] Ismail Rashid, "Class, Caste, and Social Inequality in West African History," in Emmanuel Kwaku Akyeampong, ed. *Themes in West Africa's history* (Athens: Ohio University Press, 2006), 118-140.

To some extent, these edicts also marked a shift from "traditional" or "customary" forms of marriage practices and dispensation of justice, where the Muslim judge or judges could declare divorce solely on the husband's account and without consulting the wife. Some scholars see this "traditional" male–centered understanding of *sharia* as resulting in discriminatory treatment that negatively impacts women.[7] This also resonates well with what Qadi Secka sees as the major difference between the present and former qadis in the Gambia, where present qadis tend to look abroad for training at modern universities, while former qadis tended to be "traditionalist" and *sharia* oriented. For Secka, these differences could determine the outcome of a case before a qadi because "traditionalists" would tend to negatively treat women.

This dissertation also examines how colonial rule impacted the legal landscape with the introduction of ordinances. Politically, colonial rule limited the boundaries within which Africans could navigate. Colonial rule pushed "traditional" African rulers into a narrow corridor of legal and political power. An example from the Gambia on how colonial administrators exerted influence on "traditional" authority was the case of Chief Mansajang Sanyang. In 1932, Mansajang was removed from the throne and banished from Upper River Province to North Bank Province. After four months in exile, Mansajang contested his banishment to the Commissioner of North Bank and to the Governor arguing that he was wrongfully dismissed

[7] For example, see Amien Waheeda, "Overcoming the Conflict between the Right to Freedom of Religion and Women's Rights to Equality: A South African Case Study of Muslim Marriages," *Human Rights Quarterly*, 28, 3 (Augst 2006): 729 – 754; Anwar Hekmat, *Women and the Koran: The Status of Women in Islam* (Amherst: Prometheus Books, 1997); Fatima, Mernissi, *Women and Islam: An Historical and Theological Enquiry* (Oxford: Blackwell Publishers, 1987); Codou Bop, "Roles and the Position of Women in Sufi Brotherhoods in Senegal". *Journal of the American Academy of Religion* 73, no. 4 (2005): 1099-1119; Penda Mbow, "Les Femmes, Lislam et les Assciations Religieuses au Senegal: Le Dynamisme des Femmes en Milieu Urbain," in *Transforming Female Identities, Women's Organizational Forms in West Africa* (Uppsala: Nordiska Afrikainstituet, 1997), 48 – 159.

because he was not on good terms with the Commissioner of Upper River Province. In his query to the colonial authorities, Mansajang also insisted the post of chief was rightfully his as he belonged to the "traditional" ruling family of the area.[8] This shows that colonial authorities reserved the power to remove or install any person of their choice without being sensitive to traditional and customary practices of the population.

In colonial Gambia, M. R. Haswell also notes that:

> The Governor had the power of dividing the protectorate into districts convenient for judicial and executive purposes; he could appoint head chiefs to exercise authority over districts, dismiss a head chief and appoint a successor, any districts could be divided into sub-districts and head men appointed subordinate to the head chief. This automatically changed the legal basis of any rights the chiefs might have over the territories they ruled.[9]

As a result, colonial rule further disrupted a society that was already fractured by years of conflict between Muslims and non-Muslims – issues which caused disaggregation of kin groups and families in response to the pressures of taxation, cash cropping, and urban and rural wage labor employment. Related to these are issues of weakening of marriage bonds. These problems exposed women to exploitation and abuse, forcing them to go to the courts.

This dissertation examines how the story of the court brings to the fore a sense of "collaboration" or "accommodation" which Robinson eloquently describes in his *Path of Accommodation* - how France came to patronize a variety of Islamic institutions and how conquered Muslim populations, through their own institutions, came to accommodate themselves to being ruled by non-Muslims. Similarly, I term such a relationship between the British and

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[8] NRS, 1932, The Commissioner North Bank Province to the Honorable Colonial Secretary, Confidential, Banjul, The Gambia.

[9] M. R. Haswell, *The Changing Pattern of Economic Activity in a Gambian Village* (London, H. M. Stationery Off., 1963), 22-28.

local Muslim elders in Gambia as "charm offensive" – how the British colonial officers would positively and negatively confront Muslim populations - oppose but at the same time support Muslim elders' demands in building secular schools and Islamic institutions. The British generally depended on some Muslim elders to do their bidding – where Muslim elders would travel around the country to convince the rest of the population of the good works of the British. The British experience with northern Nigeria informed their actions towards Islam and Muslim communities in West Africa, where they practiced indirect rule based on a level of cooperation between the traditional Muslim rulers and the colonial government. In this way, European power came to be seen as positive, even if it displaced "traditional" authority and power.

This dissertation also discusses the importance of local Muslim clerics who studied abroad in other parts of the West African sub-region, especially in Senegal and Mauretania. This resonates well with the idea of "transnational Islam" – where events and ideas of Islam in one location affect developments of the religion in other areas. In the eighteenth and nineteenth centuries, there were movements of scholars between North and West Africa, including itinerant Muslim clerics, influencing theology and the practice of Islam wherever they passed through. During these periods, the West African region was also a scene of forceful dissemination of Islam by militant clerics who attempted to build theocratic states. These events impacted the religious and political landscape as well as the relationship between the larger Muslim groups and Europeans. For example, militant leaders such as Al-Haj Umar Tal only proclaimed *jihad* after his pilgrimage to Mecca. Umar's activities adversely influenced religious conversion and

practice in the region.[10] Also, some of these scholars returned with new ideas about Islamic theology and practices that had an impact on the local development of Islam.

Most of the qadis were products of local Islamic schools (*daras* or *karanatas*) where they studied not only Islamic sciences but also aspects of "tradition" and "custom," particularly in marriage, inheritance, divorce and property rights. For example, in an interview with the elders of Medina, they indicated that though Islamic law does not give rights to a wife to inherit her deceased husband's property, "customary" law allowed the wife to get a share of the husband's property. For according to "custom," a woman could remain in her husband's house for as long as she remained single and sometimes for the remainder of her life if she passed the age of menopause. The qadis therefore, in dispensing justice, had opportunities to sometimes consider "customary" and "traditional" practices in making judgments.[11]

Qadis' decisions were sometimes influenced by the tight knit nature of social and kinship relationships. The town of Bathurst developed into a tiny settlement where intermarriage between residents was and is still common. As a result, a qadi would at times plead with litigants to first come to his home to try to settle their problems before going to the courts. These actions

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[10] See Robinson, David. *The Holy War of Umar Tal: The Western Sudan in the Mid-Nineteenth Century* (Oxford: Clarendon Press, 1985). Madina Ly-Tall, *Un Islam militant en Afrique de l'ouest au XIXe siècle : la Tijaniyya de Saïku Umar Futiyu contre les pourvoirs traditionnels et la puissance colonial* (Paris: L'Harmattan, 1991). Muhammad al-Hafīz al-Tidjānī, *Hadj Omar Tall, 1794-1864: Sultan de L'état Tidjanite de L'Afrique Occidentale, Traduit de L'arabe par Fernand Dumont* (Publisher Abidjan: Nouvelles Éditions africaines, 1983).

[11] It should be mentioned that the "native" law and "custom" has become increasingly Muslim law due the Islamization in the region for several centuries. In fact, Islam is so ingrained with "tradition" that "traditional" conflict resolution often relied on *hadith* to attempt resolve conflicts. For example, Islam, the term "*sabarr*" has been re-interpreted in the Gambian context with the local meaning connoting forbearance and forgiveness. "*Inna Allah ma es-sabarriin*" (God is with the patient/forgiving ones), and "*Es-sabr miftahul farajj*" (patience/forbearance is the key to success).

showed the extent to which the qadis could rely on "traditional" and "customary" practices making decisions in court.

The dissertation also explores how qadis were incorporated into the colonial system, either through their qualifications or through recommendations by a previous qadi. This was demonstrated by the fact that most of the qadis assumed qadiship through recommendation from the previous qadi. This hereditary form of assumption of qadiship could have implications for judgments and rulings of the court because it could mean that all of the qadis had the same training and belonged to the same school of thought.

The dissertation underscores the relationships between Bathurst Muslim elders. An interesting perspective on this relationship was the way they were divided over issues of qadiship and place of origin. The 1928 crisis brought to the fore deep divisions between the Muslim inhabitants of Bathurst, not only over something that appeared to be a family or private matter, but also over Muslims' struggles to create a religious space. The crisis showed how the matter of fathering an illegitimate child ultimately became a public affair. In essence, the issue focused on who could legitimately become qadi according to a section of the Bathurst Muslims. According to opponents of Qadi Ceesay, only those Muslim clerics considered as having Bathurst origins could become qadi. As shown in Chapter Three, Jahumpa, one of the key opponents of removing Qadi Ceesay, assumed that the Bathurst elders would like to have a qadi who was one of their own. This meant that Qadi Ceesay, as a late migrant to the colonial city, was not considered a Bathurst citizen.

The case also underlined the importance of the post of the qadi and the control of the institution in the new settlement. As Allan Christelow states, in Senegal, "the qadi represents a unified polity embracing different classes and interest groups. This is based on the Muslim

conception of the Madina as a protected physical space shared by autonomous communities, each internally articulated by its religious courts and schools. Because it helped give the Muslim urban community a sense of autonomy and identity, especially as long as that community was barred from effective participation in municipal politics."[12] In the Gambia, though the Muslims were not officially prevented from politics, they were not able to present a united candidate during the party politics of the late 1950s or during the 1960s and 1970s.[13]

This dissertation also examines reasons why Bathurst Muslims remained divided and opposed to each other despite being of the same ethnicity. Early settlers came to Bathurst as a fragmented group and arrived in waves. Some groups came with European settlers from Senegal as slaves or servants and as technicians to build the new British colonial city. Others came as a result of the Muslim wars that ravaged the region for more than half a century. Some came as individual migrants in search of labor, colonial education, and other opportunities provided by the city. The new city had very little to offer in terms of ethnic and kinship security and the migrants found it necessary to form new alliances or groupings to survive changing conditions in the urban space.

These alliances were formed based on several factors such as ethnicity, place of origin and caste, and economic and political interests. All the qadis profiled here were of the Wolof ethnic group, though one of the most controversial issues over qadiship centered on place of origin that also showed features of caste and contestations over political representations. One

[12] Allan Christelow, "The Muslim Judge and Muslim Politics in Colonial Algeria and Senegal," *Comparative Studies in Society and History*, l, 24, 1 (Jan, 1982), 4.

[13] During party politics of the 60s and 70s, Bathurst had three Wolof Muslim political aspirants; Jahumpa of the Muslim Party; J.C. Faye of the Democratic Party; P.S. Njie of the United Party.

could say that belonging to Islam did not help in cementing the ties between Bathurst Muslims or help in suppressing their disagreements.[14]

Essentially, this dissertation demonstrates the significance of the Muslim court in the social and legal changes that followed the imposition of colonial rule in what is now Gambia and the ways in which Gambians responded to the courts. A section of Bathurst women took advantage of the courts and brought cases against abusive husbands and parents and thereby escaped strict control and gained a minimum of fairness and rights – of divorce, custody, and property rights. Importantly, the dissertation showed the complications and contradictions of British colonialism in Gambia through the everyday lives of women and men in colonial Bathurst.

[14] See Deborah Pellow "Muslim Segmentation: Cohesion and Divisiveness in Accra," The Journal of Modern African Studies, 23, 3 (Sep., 1985):419-444. For example, Pellow echoes that the differentiation among some Muslims in Ghana centered on the argument of legitimacy - to build a new mosque and to choose a new leader. For her this contestation is fuelled by the dyadic concept of ethnic group and ethnicity and regional identity.

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